

THE CORPORATION OF THE CITY OF MISSISSAUGA



MATERIEL MANAGEMENT

**Standard Terms and Conditions
of Contract**

2010

March 5, 2010

TABLE OF CONTENTS

Standard Terms and Conditions of Contract	- 1 -
1. Scope.....	- 1 -
Definitions:	
2. Alternate Offer	- 1 -
3. Bid.....	- 1 -
4. City.....	- 1 -
5. Contract.....	- 1 -
6. Formal Bid Request	- 1 -
7. Informal Bid Request.....	- 2 -
8. Prime Offer	- 2 -
9. Vendor.....	- 2 -
Provisions:	
10. Accessibility:.....	- 2 -
11. Anti-bribery:	- 3 -
12. Applicable Law:.....	- 3 -
13. Assignment:	- 3 -
14. Capability of Vendor:	- 3 -
15. Compliance:	- 3 -
16. Confidentiality and Proprietary Information:	- 4 -
17. Conflict of Interest:	- 5 -
18. Contract Alterations:	- 5 -
19. Damages and Defects:.....	- 5 -
20. Electrical Approvals:	- 6 -
21. Eligibility of Vendor:	- 6 -
22. Environmental Responsibility:.....	- 6 -
23. Estimated Quantities:	- 6 -
24. Ethical Conduct.....	- 6 -
25. Expiration and Termination of Agreement:	- 6 -
26. Exports into Canada:.....	- 7 -
27. Extras:	- 7 -
28. FOB / Freight:	- 7 -
29. Force Majeure:	- 7 -
30. Income Tax Status:	- 7 -
31. Indemnification:	- 7 -
32. Independent Contractor:.....	- 8 -
33. Inspection:.....	- 8 -
34. Insurance:.....	- 8 -
35. Intended Purpose:.....	- 9 -
36. Invoicing:	- 9 -
37. Material Safety Data (MSD) Sheets:	- 9 -
38. No Lemon Policy:	- 10 -
39. Non-Disclosure:	- 10 -
40. Non-Performance:.....	- 10 -
41. Order of Precedence:.....	- 10 -

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

42.	Over Shipments of Goods:.....	- 11 -
43.	Ownership and Delivery of Materials:.....	- 11 -
44.	Patents:.....	- 11 -
45.	Packaging and Disposal:.....	- 11 -
46.	Payment Terms:.....	- 12 -
47.	Permits:.....	- 12 -
48.	Publicity/Use of Names:.....	- 12 -
49.	Requirements:.....	- 12 -
50.	Rights and Remedies:.....	- 12 -
51.	Safety:.....	- 13 -
52.	Sub-Contracting:.....	- 13 -
53.	Successors:.....	- 13 -
54.	Supplier Teams (if applicable):.....	- 13 -
55.	Survival of Clauses:.....	- 14 -
56.	Taxes:.....	- 14 -
57.	Timing:.....	- 14 -
58.	Title:.....	- 15 -
59.	Training:.....	- 15 -
60.	Waiver:.....	- 15 -
61.	Warranty:.....	- 15 -
62.	Workplace Safety and Insurance Board (WSIB).....	- 15 -

Standard Terms and Conditions of Contract

Note: This form to be used with successful bidders who have been awarded a contract further to a procurement process.

1. **Scope**

Unless inconsistent or in conflict with any provision contained in the applicable City Request for Tender, Request for Proposal, Request for Quotation, Request for Pre-Qualification, Letter of Interest or other solicitation from the City to external suppliers (Vendors) in connection with a proposed procurement (any such solicitation being referred to in this document as a Bid Request), these terms and conditions shall apply. To the extent these instructions are inconsistent or in conflict with any provision(s) of such applicable Request, the provision(s) of such applicable Bid Request shall govern.

Definitions:

2. **Alternate Offer**

A Vendor bid which may or may not conform exactly with the City's requirements as specified but which reflects a more effective solution to meeting the City's needs considering quality and price in the Vendor's opinion and that is submitted in addition to a prime offer. The prime offer that has been submitted must be fully responsive (compliant) for the alternate offer to be evaluated.

3. **Bid**

A Vendor offer submitted in response to a City Request for Proposal, Quotation, Tender or Expression of Interest to supply goods and/or services.

4. **City**

The Corporation of the City of Mississauga.

5. **Contract**

The Contract resulting from the acceptance by the City of a Bid by a Vendor for the supply of goods and/or services which Contract is evinced by and comprised of a computer generated and numbered City purchase order or Contract form, the Bid, the Bid Request, any addenda issued by the City, all specifications, requirements, drawings and/or plans issued to the Vendor by the City, these Standard Terms and Conditions and, if required by the City, a formally executed Agreement satisfactory to the Purchasing Agent.

6. **Formal Bid Request**

A solicitation normally called a Request for Tender, Proposal or Expression of Interest, responses to which will be opened and read out in a public forum.

7. **Informal Bid Request**

A solicitation normally called a Request for Quotation or Proposal, responses to which will be received by the Purchasing Agent or designate.

8. **Prime Offer**

A Vendor bid which conforms with the City's requirements as specified in the Formal Bid Request form (no major irregularities), and which reflects the total amount the Vendor intends to submit for consideration.

9. **Vendor**

Any individual or corporation, consultant or Contractor submitting offers, or contemplating submitting offers to the City for the supply of goods and/or services, or who is already under a supply Contract with the City .

Provisions:

10. **Accessibility:**

a) Training on Accessible Customer Service Standards

When requested by the City, the Vendor shall provide training on the City's accessible customer service standards to all of its personnel who will be delivering services to the City. At a minimum, providing a copy of the Accessibility Standards for Customer Service guide known as "May I help you?: Understanding Accessible Customer Service", as provided by the City to the Vendor and as may be amended from time to time ("City's Manual") to all such personnel and requiring them to review the same before, or as soon as practicable after, they start any work for the City. The Vendor agrees that new training may be required from time to time should the City's Manual be amended, and shall deliver such new training in accordance with the standard of training as provided in this section.

The Vendor shall also maintain a record of all training provided to the Vendor's personnel on the City's accessible customer service standards as required under this section, which shall include at a minimum the dates on which the training is provided and the number of individuals to whom the training is provided. The Vendor shall furnish any required records of accessible customer service training to the City within ten (10) business days of the City's request, unless otherwise agreed upon by the City.

b) Consideration of Accessibility in Acquisitions

The City will conduct the acquisition of goods and services in such a way as to promote and, whenever possible, incorporate the requirements of the "*Ontarians with Disabilities Act*".

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

11. **Anti-bribery:**

Should the Vendor or any of its employees, agents, Contractors or representatives give or offer any gratuity to, or attempt to bribe any member of City Council or any City officer or servant, then the Purchasing Agent shall be at liberty to cancel the Contract forthwith or to direct City staff to take the whole or any part of the Contract out of the hands of the Vendor, without prejudice to any other rights and remedies accruing to the City under this Agreement or by operation of law.

12. **Applicable Law:**

The validity and interpretation of the Contract, and of each clause and part thereof, shall be governed by the laws of the Province of Ontario. In addition, the requirements outlined in the City's Purchasing By-law 374-06, as may be amended from time to time, shall apply for all procurement processes conducted to secure goods and services as defined therein.

13. **Assignment:**

It is mutually agreed and understood that the Vendor shall not assign, transfer, convey, sublet or otherwise dispose of the Contract or the Vendor's right, title or interest therein, or power to execute such Contract, without the previous written consent of the City's authorized representative.

14. **Capability of Vendor:**

The Vendor must be prepared, if requested, to present evidence of experience, ability, capacity, and financial resources and reputation deemed necessary by the City for the performance of the Contract. The City reserves the right to investigate a Vendor's claim or background at any time, and in any manner deemed appropriate by the City and shall not be required to disclose the information obtained or the source.

15. **Compliance:**

The Vendor shall comply, and shall assure compliance by any/all of the Vendor's suppliers, sub-suppliers, consultants and Contractors, with all federal, provincial and municipal laws and regulations applicable in respect of the Vendor's organization and ownership and all operations related to or in connection with the City of Mississauga and any/all supply Contracts with the City. The Vendor shall also comply with all applicable policies, such as but not limited to the City's Respectful Workplace Statement of Commitment and Acceptable Use of Mobile Technology Policy on the City's website at <http://www.mississauga.ca/portal/business/tendersandbids>) or through contacting the Purchasing Unit.

Failure to do so may be considered a default and the City shall be entitled at its sole discretion to terminate the Contract and pursue any other legal recourse which the City deems to be appropriate.

16. Confidentiality and Proprietary Information:

Subject to the *Municipal Freedom of Information and Privacy Act*, the Contracting parties agree as follows:

- 16.1. Confidential Information disclosed by a party (a “Disclosing Party”) to another (a “Receiving Party”) shall remain the property of the Disclosing Party and shall be used by the Receiving Party solely in connection with the initiative and the purpose contemplated by the Contract.
- 16.2. Each party agrees to maintain the Confidential Information of the other in confidence, using at least the same degree of care as it uses in maintaining as secret its own trade secrets, confidential and proprietary information, which in any event shall not be less than a reasonable degree of care.
- 16.3. Each party agrees that it will not disclose any portion of the Confidential Information belonging to the other party to any person except those having a need to know such portion in order to assist in fulfilling its obligations under the Contract or as otherwise expressly agreed by the Disclosing Party. In addition, Confidential Information provided under the Contract shall not be disclosed to any third parties unless: (i) such disclosure is in accordance with the obligations arising under the Contract or (ii) the Disclosing Party consents to the third party disclosure and the third party agrees in writing to protect the Confidential Information from unauthorized use or disclosure in compliance with the provisions of this Section.
- 16.4. A Receiving Party will not reproduce in whole or in any part any Confidential Information received from a Disclosing Party, other than strictly as required to fulfil its obligations under the Contract (and keeping a record of such copies) without the prior express written consent of the Disclosing Party. In the event consent is given, each copy or reproduction must be clearly marked to indicate its proprietary nature.
- 16.5. The obligations of this Section shall remain in full force and effect until termination of the Contract or until the end of a five (5) year period from the date of the last disclosure of Confidential Information, whichever occurs later.
- 16.6. Upon the written request of the Disclosing Party, the Receiving Party shall return all copies, records, notes, diagrams, documents, reports and all other written materials containing any portion of Confidential Information or otherwise derived from such Confidential Information that party has received.
- 16.7. The provisions contained in this Section do not apply to Confidential Information that:
 - is lawfully obtained by the Receiving Party from a third party under no obligation of confidentiality, direct or indirect;

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

- is or becomes publicly available without any act or failure to act by the Receiving Party;
- is independently developed by the Receiving Party without use of the Confidential Information;
- is required to be disclosed by law or by order of a legal or governmental authority of competent jurisdiction provided that the Disclosing Party is given prior written notice of such order or law and given the opportunity to seek a protective order against such disclosure; or
- is documented as already being in possession of the Receiving Party without burden of confidentiality.

16.8. No license to any other party, under any trademark, patent or copyright, or applications which are now or may thereafter be owned by such party, is either granted or implied by the conveying of Confidential Information to that party.

16.9. The Vendor acknowledges that the City may disclose the existence of the Contract and the bid amounts. (See definition of “Formal Bid Request”.)

17. Conflict of Interest:

The Vendor, its partners, directors, officers, employees, agents and volunteers shall not provide any services to the City or any person, group, or organization funded in whole or in part, by the City where the provision of such services, actually or potentially, creates a conflict of interest with the provision of service pursuant to this Contract, without the Vendor first disclosing to the City the actual or potential conflict of interest with the City and obtaining approval from a City authorized representative to proceed.

18. Contract Alterations:

Any alterations, additions, or deletions to the Contract, shall not be valid or binding on the City unless authorized in writing by the Purchasing Agent or designate.

19. Damages and Defects:

19.1. The Vendor agrees that all products or services provided by the Vendor shall be new upon delivery and installation, in good operating condition and free of defects in workmanship and material, and the Vendor shall repair or replace any damaged or marred items caused or occasioned through the handling or installation by the Vendor or otherwise occasioned in transit.

19.2. The Vendor agrees to furnish adequate protection from damage for all work and to repair damage of any kind for which the Vendor or the Vendor’s workers are responsible, to the premises or equipment, to its own work or the work of other Vendors.

20. **Electrical Approvals:**

All electrical equipment and component parts must be Canadian Standards Association (CSA) or Ontario Hydro Approved.

21. **Eligibility of Vendor:**

The Purchasing Agent shall have the right to de-list any Vendor from future bidding for failure by the Vendor to accept a Contract that has been offered by the City or for unsatisfactory performance of a Contract that has been awarded and implemented.

22. **Environmental Responsibility:**

For the duration of the Contract, the Vendor shall, upon request, provide proof (acceptable to the Purchasing Agent), that goods and services being provided under the Contract continue to meet the environmental standard proffered in their original bid submission.

23. **Estimated Quantities:**

Where specified, quantities are estimated, and the City reserves the right to increase or decrease purchase quantities by any amount at its sole discretion, however, all prices shall remain firm for the duration of the Contract or until all items have been received, or works completed and payment has been processed; unless otherwise provided by the Contract.

24. **Ethical Conduct**

In addition to being in compliance with all applicable federal, provincial and municipal laws and regulations, vendors are expected to behave in an ethical manner having regard for and demonstrating care for, the condition of or well-being and fair treatment of all persons, places and things.

25. **Expiration and Termination of Agreement:**

25.1. The Contract may be terminated and cancelled by the City if:

- the Vendor fails to furnish satisfactory performance surety within seven (7) days from the date of the City's request if applicable;
- the parties mutually agree in writing to terminate; or
- the Term has not been specifically renewed by the City; or,
- the Vendor is in default or otherwise fails to provide the services or to perform the work in a good and professional manner and in compliance with the terms and requirements under the Contract to the satisfaction of the City.

25.2. In terminating the Contract for failure to provide satisfactory performance surety as specified in the Formal Bid Request, the City does not waive any obligations or commitments agreed to by the Vendor as part of the bid submission including without limitation; return of bid deposit, liability for the difference between the Vendor's bid and the next lowest acceptable bid.

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

25.3. Upon termination, the Vendor must immediately cease use of the City's materials, information and documents including all endorsements, recommendations and testimonials provided to the Vendor by the City. Should the City not request the return of said materials, information and documents, the Vendor shall immediately destroy such material at its own cost.

26. **Exports into Canada:**

The Vendor must forward properly certified customs invoices separately to the City's Procurement Officer at the time shipment is made. Extra copies should accompany the shipment and be marked to the attention of Frank R. Stockwell Ltd., the City's customs broker.

27. **Extras:**

All Vendor expenses for extras or for travel or administrative expenses shall be the responsibility of the Vendor unless specifically set out as being allowed in the bid request form.

28. **FOB/Freight:**

All goods and services shall be FOB destination and freight prepaid, by the Vendor to any specified delivery point within the City boundaries.

29. **Force Majeure:**

It is understood and agreed that the Vendor shall not be held liable for any losses resulting if the fulfilment of the terms of the Contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other cause not within the control of the Vendor and which by the exercise of reasonable diligence the Vendor is unable to prevent. Should the performance of any Contract be delayed or prevented as herein set forth, the Vendor agrees to give immediate written notice and explanation of the cause and probable duration of any such delay.

30. **Income Tax Status:**

The Vendor declares that the Vendor is a resident of Canada for the purposes of *Income Tax Act*, Canada.

31. **Indemnification:**

At all times from the commencement of the Contract, the Vendor shall indemnify and hold harmless the City, its elected officials, officers, employees, agents and Contractors, from and against, any loss of, or damage to, property, personal injury or death, or any other losses, actions, claims, causes of action, damages, both direct or indirect, and such other costs and

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

expenses, howsoever and whatsoever incurred, suffered or sustained by the City directly or indirectly arising or alleged to arise out of the duties and obligations under the Contract.

32. **Independent Contractor:**

The Vendor and supplier team, if applicable, shall be independent Contractors providing services to the City for a specific purpose and duration. Neither the Vendor nor the Vendor's employees or agents, nor any members of the supplier team shall be construed as City employees.

33. **Inspection:**

The City reserves the right to inspect and have a demonstration of any/all goods which may be offered or of the Vendor premises prior to award and at any point during the Contract.

34. **Insurance:**

At its own expense, the Vendor must provide and maintain appropriate insurance for a prudent operator in its line of business for the duration of the Contract and any renewals thereof, and with Insurers acceptable to the City of Mississauga. In addition, the Vendor may be requested to provide any or all of the following:

- 34.1. Commercial General Liability - Three million dollars (\$3,000,000.00) with a maximum deductible of \$25,000.00, in respect to the repair and replacement of all work the Vendor undertakes under the Contract against claims for personal injury, death or property damage or loss, indemnifying and protecting the City and the Vendor, their respective employees, servants, agents, Contractors, invitees or licensees. Such insurance shall specifically state by its wording or by endorsement that the City is added as an additional insured under the policy,
- 34.2. Auto Liability - Two million dollars (\$2,000,000.00) per occurrence with no annual aggregate,
- 34.3. Errors and Omissions Insurance - Three million dollars (\$3,000,000.00) with a maximum deductible of \$25,000.00,
- 34.4. Crime Insurance - One hundred thousand dollars (\$100,000.00) employee dishonesty coverage with not less than \$50,000 broad form money and security coverage,
- 34.5. Property Insurance - In such amounts as required to adequately cover the property and equipment, and other such property in the care, custody and control of the Vendor. The policy shall contain a waiver of rights of subrogation against the City.
- 34.6. All insurance policies shall remain valid and unchanged during the life of the Contract. Any changes to limits and coverage must be submitted for City

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

approval, any unauthorized changes may constitute automatic termination of the Contract at the City's sole discretion.

34.7. Upon receipt of notification by the City to do so, the Vendor must supply a Certificate of Insurance indicating compliance with the specified requirements, prior to execution of the Contract, and in the event of any/all changes in coverage including expiry, which may occur prior to completion of the Contract.

34.8. Such policies must not be terminated, cancelled or materially altered unless written notice of such termination, cancellation or alteration is given by the Insurers to the City, at least sixty (60) days before the effective date thereof.

35. **Intended Purpose:**

The Vendor agrees that all products, goods and services provided by the Vendor and its sub-vendors to the City hereunder are suitable for their intended purposes, will perform in accordance with the City's specifications and will satisfy the City's requirements and operate in accordance with all published performance specifications contained in any of the Vendor's product manuals.

36. **Invoicing:**

All invoices submitted by the Vendor shall reference the order number and conform to the order and content as set out in the City's numbered purchase order form and shall provide additional information as follows:

- 36.1. Goods and Services Tax shown separately
- 36.2. Provincial Sales Tax shown separately
- 36.3. Vendor's GST registration number

Exempt or zero-rated supplies should be denoted on a line by line basis. Invoices that do not comply will be returned for adjustment prior to processing payment, and any delays resulting from this action shall not prevent the City from taking any payment discounts.

37. **Material Safety Data (MSD) Sheets:**

The Vendor shall supply current MSD sheets for all products supplied on or before delivery of initial shipments and again 60 days prior to expiry of the sheet. Failure to comply with this instruction or to label products in accordance with the **Workplace Hazardous Materials Information System ACT** may result in cancellation of the Contract, in which event any existing stocks shall be removed and credited back to the City in full by the Vendor. The City shall be under no obligation whatsoever, to any Vendor who does not comply with the City's policy and procedure in this regard.

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

38. **No Lemon Policy:**

Any equipment purchased by the City shall be subject to a “No Lemon Policy” whereby after three attempts to repair a recurring malfunction, the City, at its sole discretion can direct the Vendor to replace the equipment on a “like-for-like” basis at no additional cost to the City.

39. **Non-Disclosure:**

Neither the City nor the Vendor shall at any time divulge any matters relating to the business of the other party or any customers, agents of the other party which may become known to it by reason of its services or otherwise and shall be true to the other party in all dealings and transactions relating to the services contemplated by the Contract. Furthermore, neither the City nor the Vendor shall use at any time, during the Contract, or after its termination, for its own benefit or purpose of any other person, firm, corporation, association or other business entity, any trade secrets, data or plans belonging to or relating to the affairs of the other party, including knowledge relating to customers, clients, or employees of the other party.

40. **Non-Performance:**

The performance of the Vendor will be evaluated on a regular basis. If the quality/quantity of work and/or the rate of progress are not in accordance with the provisions of the Contract, or to industry standard the City shall notify the Vendor of the deficiencies and, following the delivery of such notice, afford the Vendor an opportunity to rectify the deficiencies. Should the Vendor fail to rectify the deficiencies in the time allowed, then the City shall be at liberty to cancel the Contract, and in so doing, shall be under no obligation whatsoever to the Vendor.

In addition, in the event of non-performance, payment in whole, or in part, may be withheld. If early payment discounts are involved, the withholding of payment as provided herein shall not deprive the City from taking such discounts.

41. **Order of Precedence:**

The Contract will be governed by the provisions contained in the following documents in the order shown:

- 41.1. City authorized change orders,
- 41.2. Formally executed agreement form if any,
- 41.3. Computer generated and numbered City standard Purchase Order or Contract form,
- 41.4. Post bid correspondence (in order chronologically by date) containing agreed to changes to the Vendor bid if any,
- 41.5. City “Special Terms and Conditions of Contract”,
- 41.6. City “Specifications” or “Statement of Work”,
- 41.7. City “Standard Terms and Conditions of Contract”,
- 41.8. Vendor Bid.

42. **Over Shipments of Goods:**

All over shipments made are the responsibility of the Vendor. The City reserves the right to reject and return, at the Vendor's expense, any goods in excess of the quantity ordered or; at the Vendor's discretion, the City may keep the goods on a "no charge" basis.

43. **Ownership and Delivery of Materials:**

43.1. The Vendor agrees that all information and material of any kind whatsoever acquired or prepared by or for the Vendor pursuant to the Contract shall, both during and following the termination of the Contract, be the sole property of the City, including all information and material provided by the City to the Vendor for the purposes of the Contract.

43.2. Upon the request of the City, the Vendor agrees to deliver forthwith to the City all materials and information specified in the request that is/are the property of the City and in the possession or under the control of the Vendor. No copy or duplicate of any such material or information delivered to the City shall be retained by the Vendor and/or supplier team without the prior written approval of the City. The Vendor further agrees not to destroy any material or information which is the property of the City without the City's prior written approval. This provision survives the expiration or termination of the Contract.

44. **Patents:**

The Vendor shall indemnify and save harmless the City, its Councillors, employees and agents from any and all liability, damages, orders, injunctions, penalties, costs and expenses arising in relation to any actions, causes of action, claims, suits or other proceedings commenced against the City by any third party regarding the receipt, purchase or use by the City of the Vendor's services under the Contract and which infringes any third party patent, copyright, trade secrets, secret process or any other intellectual property entitlement whatsoever and from liability of any kind for the use of any composition, secret process, invention article, appliance, good or service furnished or used in performance of the Contract of which the Vendor is not the patentee, assignee, licensee or trademark holder.

45. **Packaging and Disposal:**

The Vendor shall eliminate or reduce the amount of packaging to the extent possible and shall remove packaging from delivered and installed items. Packaging once removed, must be recycled or transported and disposed of in accordance with all applicable laws and regulations governing waste disposal. Further, the Vendor must indicate where garbage is taken for disposal when requested to do so by the City.

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

46. **Payment Terms:**

Terms shall be Net thirty (30) days upon receipt of an acceptable invoice or delivery and acceptance by the City's authorized representative of requested goods and services, whichever is later.

47. **Permits:**

The Vendor shall pay for all permits, licenses and fees, and give all notices and comply with all applicable statutes, laws, by-laws and regulations, federal, provincial, municipal or otherwise.

48. **Publicity/Use of Names:**

48.1. Except as provided for in the Contract, any news release, public announcement, advertisement, or publicity released by the parties concerning the Contract or the initiative will be subject to the prior written approval of the other party and any third parties as required. Any such publicity shall give due credit to the contributions of each party.

48.2. Neither party has the right to use the other's name, logo, trademark, insignia or other intellectual property without the prior written consent of the other.

48.3. The Vendor agrees to obtain the written consent of the City before publishing or issuing any information regarding the City or the Contract.

49. **Requirements:**

The Vendor agrees to perform the Contract in accordance with the terms, provisions, and conditions of the Contract, all specifications and requirements of the City and any supplemental directives issued by the Purchasing Agent and in accordance with the Bid pursuant to which the Contract has been awarded. Any item which fails in any way to meet the terms of the Contract is subject to rejection, or to be paid for on an adjusted basis, and the decision of the City Purchasing Agent is final.

50. **Rights and Remedies:**

In the event of cancellation or termination of the Contract by the City, the City shall have the following rights and remedies;

50.1. The City may re-Contract for the supply of services, with any other person or firm, with or without advertising and with or without issuing a Bid Request form, and the City may take such other steps as needed or appropriate to secure completion of the Contract and performance and delivery of all services to the satisfaction of the City, and the Vendor shall be liable for all direct or indirect damages, costs and expenses incurred by the City in excess of those provided for in this Contract.

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

50.2. All payments previously made by the City shall be refunded by the Vendor to the City, immediately upon the return of previously delivered or performed goods and services without prejudice to any other rights, recourse or remedies the City may have available to recover all direct and indirect damages caused by the Vendor's default and termination of the Contract.

50.3. All rights and remedies available to the City are distinct, separate and cumulative and shall not be exclusive of any rights or remedies available to the City under this Contract or otherwise at law or in equity. No delay or omission by the City in exercising such a right or remedy or single or partial exercise of any right or remedy shall include any other or further exercise of such right or remedy or the exercise of any other right or remedy.

51. **Safety:**

51.1. The Vendor shall abide by the provisions of the Ontario Occupational Health and Safety Act and all other legislative enactments, statutes, by-laws and regulations in regard to safety in the Province of Ontario.

51.2. The Vendor must comply with the requirements of the Workplace Safety and Insurance Board throughout the term of the Contract. Where services are provided under the Contract, a Certificate of "Good Standing" from the Workplace Safety and Insurance Board shall be required prior to execution of the Contract and may also be required in the event of any changes which may affect the status of the Contract and in particular, toward the end of the Contract - prior to any final payments being made.

52. **Sub-Contracting:**

The Vendor shall not sub-contract any portion of the Contract work without written approval by an authorized representative of the City.

53. **Successors:**

The Contract shall bind and inure to the benefit of the successors and permitted assigns of the parties.

54. **Supplier Teams (if applicable):**

In the event that a team of various suppliers is formed for the purpose of the Contract, the primary supplier must be clearly identified. The City will Contract only with the identified primary supplier (herein referred to as the " Vendor") who shall be completely responsible for the full performance of the Contract, and who shall act at all times as the primary contact for the City. The business relationships between the primary and sub suppliers shall be arranged, and any resulting conflicts resolved, without City involvement.

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

- 54.1. The Vendor agrees that no member of the supplier team will be substituted by any individual or firm without the express written authorization of the City.
- 54.2. The terms of the Contract shall apply to all members of the supplier team. In the event that a member of the supplier team is substituted, the parties agree that all terms of the Contract shall apply equally to such new members.
- 54.3. Payments pursuant to the Contract will be made directly to the primary supplier for distribution to the supplier team. The Vendor shall save the City harmless from all costs, damages, judgements, claims, demands, suits or other proceedings brought by any member of the supplier team in connection with the distribution of such fees.

55. **Survival of Clauses:**

Upon the termination of the Contract for any reason including normal expiration, clauses pertaining to: indemnity and limitation of liability, confidential and proprietary information; and, publicity, shall survive the expiration or other termination of the Contract, in addition to any other clauses which survive by operation of law, for a minimum period of two years.

56. **Taxes:**

- 56.1 The Vendor is required to be registered and in full compliance with legislative requirements for the Goods and Services Tax and the Ontario Retail Sales Tax and/or Harmonized Sales Tax (HST).
- 56.2 Once the HST is in effect, all payments made to the Vendor by the City shall be adjusted after taking into account the portion of the goods and/or services affected by the change, any input credits received by the Vendor, the transitional rules and all other relevant factors. Upon the City's request at any time and from time to time, the Vendor shall provide necessary detailed documentation to the City to support adjustments to payments under the Contract due to implementation of the HST. In the event of any dispute between the parties concerning the adjustment, the matter will be finally resolved by an independent audit firm acceptable to both the City and the Vendor.
- 56.3 Invoices paid to addresses outside Canada shall be subject to applicable Withholding Taxes in accordance with the *Canadian Income Tax Act* and applicable treaties.

57. **Timing:**

Time is of the essence for the delivery or provision of the goods and services requested herein. Failure to comply with the time schedule herein may result in the City taking further action to obtain an alternative supply, in which event the cost incurred shall be charged to the Vendor up to the time that the goods or services are delivered or provided. If such cost is not paid by the Vendor, it shall be deducted from the balance of the purchase price owing. Where it is not possible to obtain the goods or services by the specified time, the City

The Corporation of the City of Mississauga
Materiel Management
Standard Terms and Conditions of Contract

reserves the right to cancel the Contract and charge back the difference between the Contracted bid price and the acquisition cost of the alternative goods or services.

58. **Title:**

The Vendor has the full power and legal right and the responsibility to convey title to all products hereunder which shall pass to the City in accordance with the terms of the Contract and all goods and products hereunder shall be free from all liens, encumbrances, security interests and all transactions contemplated under the Contract shall be in the ordinary course of business of the Vendor within the meaning of the *Personal Property Security Act*.

59. **Training:**

Where necessary or otherwise specified in the bid request, the Vendor will be required to provide qualified training personnel to instruct the City's operators until they are familiar and competent in the operation and daily maintenance of the purchased goods or services. Unless otherwise stated, the cost will be included in the purchase price.

60. **Waiver:**

Any failure by either party to enforce at any time any of the provisions, including the termination provisions of the Contract shall not be construed to be a waiver of such provision or of the right of either party to enforce such provision or exercise any other rights available to it under the Contract or at law at any time.

61. **Warranty:**

All goods and services shall carry a minimum of a one year, comprehensive warranty from the time of the acceptance by the City.

62. **Workplace Safety and Insurance Board (WSIB):**

If specified in the City's bid request document, prior to commencing the work, again with the vendor's application for final payment and, at any time at the City's request, the Vendor shall provide a current WSIB clearance certificate.