



County of Simcoe
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TERMS AND CONDITIONS - Acceptance by Seller of this purchase order, in whatever form, will be in accordance with: (i) these terms and conditions; and (ii) any performance contract resulting from a competitive bid process, if applicable. None of these terms or conditions may be modified unless by instrument in writing signed by both parties. Without limitation, any term or condition of any of the Seller's own form of acknowledgment, confirmation of sale or invoice which modifies, conflicts with or adds to any term or condition hereof is hereby deemed to be waived by Seller unless expressly accepted in writing by the County.

REPRESENTATIONS AND WARRANTIES - It is a condition of this order, and Seller represents and warrants, that all goods and services (as applicable) to be furnished hereunder will be: (a) free from defects in material and workmanship; (b) of merchantable quality; (c) fit for purpose; (e) of a grade and performance strictly conforming with all specifications, designs, drawings, approved samples, models, descriptions, instructions and other items referred to in the performance contract, if applicable; (f) processed, manufactured, packaged, labelled, advertised, stored, transported, installed, repaired, maintained and otherwise performed, as the case may be, in compliance with all applicable laws, regulations and orders; and (g) free of infringement of any property rights of third persons, including without limitation any patent, trade-mark, copyright, industrial design, integrated circuit topography right, right of privacy or trade secret. Seller's warranties and guarantees will survive acceptance and payment.

PRICES - Price increases will not be binding unless approved by the County in advance, in writing.

INVOICES - Invoices must be submitted by email to accounts.payable@simcoe.ca. Unless otherwise specified in the performance contract, invoices must indicate the Seller's HST number, County purchase order number, number of items shipped, unit cost, terms of payment, tax applications, the County's item code (where applicable), and provide a brief description of the goods and/or services. The County's standard payment terms are net 28 unless otherwise specified in a performance contract. The County will not be liable for interest claimed on amounts considered past due to the Seller where: (i) the invoice does not bear a purchase order number or is not properly addressed; (ii) amounts are reasonably disputed; or (iii) the invoice is not delivered in a timely manner and within year end deadlines.

DOCUMENTATION & PACKAGING - (i) A detailed packing slip marked with the purchase order number shall be securely and safely packed in cartons, boxes, crates or other containers and will accompany each shipment of goods. (ii) For services performed, the Seller shall submit an Advanced Invoice Notification (AIN) to the County contact detailing the service performed, date/time, and value prior to submission of a commercial invoice. (iii) Safety Data Sheets (SDS) and appropriate labels must accompany all products classified as hazardous products under the Workplace Hazardous Materials Information System (WHMIS), as amended.

DELIVERY - Time is of the essence of this order. The County has the right to cancel this order effective on the County's written notice thereof if delivery of goods or rendering of service is not completed in the time promised. Seller will notify the County promptly whenever it appears to Seller that it will not be able to make deliveries on any date(s) specified. The County's acceptance of deliveries on dates other than as specified will not constitute a waiver of the County's right to damages. Delivery is not deemed to be complete until the goods have been received and accepted by the County.

INSPECTION - Quality assurance and control are the Seller's responsibility and the County will rely on the Seller to furnish goods or services that fully comply with order requirements. The County is not obligated to inspect goods or services prior to first use or application. A right of rejection is exercisable notwithstanding any inspection or any dealing with goods by the County. Upon the County's notifying Seller of its intention to reject the goods, risk of loss for all goods rejected will pass to Seller. Without limiting the County's rights and remedies, Seller will bear the cost to the County of unpacking, inspecting, examining, repacking, storing and reshipping rejected goods including freight and transportation charges, duties and taxes.

FREIGHT AND TAXES - Unless otherwise specifically provided for in this order, shipments must be DAP (Delivered at Place) and Seller will pay all federal, state, provincial and local sales, use, excise, value-added and other taxes and duties which may be imposed on the goods ordered or by reason of their sale or delivery. Any freight, transportation or insurance costs, taxes or duties for which the County has agreed in writing to reimburse Seller will be separately listed on Seller's invoice.

OUTSIDE CANADA - For shipments originating outside Canada, the Seller is responsible for preparing Canada Customs invoices and other documents required by Customs Canada and other government agencies. Any costs incurred due to the Seller's delay or failure to comply with Canada Customs or other government regulations will be paid by the Seller. All shipments must be cleared through the County's customs broker.

RISK OF LOSS - Risk of loss or damages and title to the goods will not pass to the County until the goods have been received and accepted by the County at the destination specified in this order, notwithstanding any agreement to pay freight or other transportation charges.

CONFIDENTIALITY - All information exchanged as part of this order is subject to the requirements of the Municipal Freedom of Information and Protection of Privacy Act.

SET-OFFS - The County will be entitled at all times to set off any amount owing at any time from Seller to the County against any amount payable at any time by the County to Seller in connection with this order. Disputes between the County and Seller in connection with the County's claims for set-off will not excuse Seller from further deliveries in accordance with the dates and other terms and conditions specified herein.

CANCELLATION - The County will have the option to cancel this order, in whole or in part, (A) in accordance with the terms of any performance contract, if applicable; or (B) without cause on 30 days written notice to the Seller provided the County will pay for goods delivered or services provided prior to notice of cancellation; or (C) by notice to Seller in writing at any time and to return at Seller's cost any goods previously delivered pursuant to this order so cancelled, if: (i) Seller defaults in performance hereunder in a material respect; (ii) in the County's opinion there has been a failure by Seller to make sufficient progress in the work so as to endanger substantially Seller's performance hereunder; (iii) in the County's opinion there has been health and safety or other serious violation (iv) Seller ceases to conduct its operations in the normal course of business; or (v) Seller becomes insolvent or makes an assignment for the benefit of creditors, or if proceedings are taken by or against Seller under any bankruptcy, insolvency or reorganization laws, or if a trustee, receiver or administrator is appointed with respect to Seller or its business or property.

FORCE MAJEURE - In the event of strikes, accidents or unforeseen circumstances causing stoppage of work at the County, the County reserves the right to suspend delivery of the goods or provision of services.

ASSIGNMENT AND SUBCONTRACTING - Seller will not: (i) sell, transfer or assign to any third party, or otherwise dispose of, any raw materials, components, work in progress or finished goods obtained, used or produced hereunder; or (ii) assign any of its rights or delegate or sub-contract any of its duties hereunder, without the County's prior written authorization.

INSURANCE & WSIB - When performing work on the County's property, the Seller will provide proof of Commercial General Liability Insurance in an amount determined by the County and Workplace Safety and Insurance Board coverage prior to commencement of work.

INDEMNITY - Seller will defend, protect, indemnify and hold harmless the County from all liability, loss, damage, cost or expense, including legal fees, paid or incurred by reason of the breach or the claim of breach of any of the conditions, representations or warranties of this order, including without limitation all claims relating to product liability or injury or damage to people or property. The County's rights and remedies set forth in this order are cumulative and in addition to all other rights and remedies under applicable law.

DISPUTE RESOLUTION - The Seller agrees to resolve all disputes with the County through the dispute resolution process outlined in the County's Alternative Dispute Resolution Process, a copy of which is available at simcoe.ca or upon request or in accordance with the terms of the performance contract, if applicable.

ENTIRE AGREEMENT / NO WAIVER - The terms and conditions of this order (and any performance contract resulting from a competitive bid process, if applicable) constitute the entire agreement and understanding between the parties pertaining to the subject matter hereof. No amendment or addition to any of these terms and conditions will be binding on either party unless in writing signed by both parties. No waiver by the County of any term or condition of this order or any remedy it may have pursuant hereto will affect any of the County's rights to enforce or to exercise any right or remedy in the event of any other breach of any other or the same term or condition.

GOVERNING LAW - The laws of Ontario and the federal laws of Canada applicable therein govern this order.