

PURCHASE ORDER TERMS AND CONDITIONS

1. **General.** Contractor shall supply the goods, perform the services and deliver the deliverables specified in the Purchase Order (“**PO**”) in accordance with the prices stipulated in the PO. Together the goods and services are the “**Work**”.
2. **Delivery Dates.** Contractor shall deliver the Work on the mutually agreed delivery date. In the event of a delay in delivery or a new delivery date proposed by Contractor is not acceptable to the Municipality, the Municipality, acting reasonably, may cancel the order for the delayed Work without any Municipality liability for such cancellation.
3. **Shipping.** Where Goods are being supplied, and unless otherwise specified herein, Contractor shall ship the Goods Delivery Duty Paid (DDP-Incoterms, 2018) (equivalent to FOB Destination), to the place of destination specified by the Municipality in the PO using the most direct and economical means. A packing slip must accompany each shipment indicating the Municipality-issued PO number. Title to the Goods will pass to the Municipality upon acceptance by the Municipality as set out in these terms.
4. **Inspection and acceptance.** The Municipality shall have 15 business days following receipt to inspect and accept the delivered Work prior to having any obligation to pay for the Work. No title shall transfer, or payment owed for the Work unless and until the Municipality has accepted the Good or Service or the period for inspection and acceptance has passed.
5. **Invoicing and Payment.** Payment for Work will be made within 30 calendar days from the later of: (a) the Municipality’s receipt of a proper invoice or (b) acceptance of the Work in accordance with acceptance provisions of the PO. Where applicable, a transportation bill of lading must be attached to each invoice. Invoices must be submitted to the Municipality of Kincardine, 1475 Concession 5, Kincardine Ontario N2Z 2X6 to the attention of Accounts Payable quoting the purchase order number provided by the Municipality. In the alternative to mailing an invoice, an electronic invoice may be submitted to AccountsPayable@kincardine.ca. Invoices must include Contractor’s GST or HST and applicable PST registration numbers.
6. **Warranty.** Contractor must perform Work in a diligent manner. Work must be of a quality at least equal to that generally accepted in the industry or profession for similar work. Goods must be new and of current production and following the Municipality’s acceptance, delivered Work must be and remain free from defects in design, material, and workmanship; and conform to and perform in accordance with written specifications, drawings and samples accepted by the Municipality or specified in the PO.

7. **Warranty Remedy.** Work discovered within 12 months of acceptance (or such longer term as may be specified in the PO) as failing to comply with applicable warranties will be, at the Municipality's option and at no charge to the Municipality: (i) returned for a full refund or credit of amounts paid by the Municipality for the defective Goods, (ii) repaired, (iii) replaced; (iv) re-performed by Contractor using alternate personnel if instructed by the Municipality or (v) rejected by the Municipality, at no cost or expense to the Municipality and with any shipping and transportation costs and risk of loss and damage in transit borne by Contractor. Repaired and replaced Goods or re-performed Services shall be warranted as set forth in this Section. Unless otherwise specified on the PO, if an additional warranty-related obligation (e.g., manufacturer's warranty) sets a warranty time period or warranty standard that is not consistent with a warranty time period or warranty standard set out in this Section, Contractor shall comply with the longest time period and highest standard. The above remedies are in addition to any other remedies available to the Municipality at law.
8. **Cancellation.** The Municipality may at any time and for any reason, in whole or in part, cancel the order for Work under a PO, or suspend the performance of Work. Where performance of the Contract is suspended by the Municipality for its convenience, the Contract shall be deemed terminated for convenience on the 30th day of such suspension unless otherwise agreed by the parties in writing.
9. **Payments Due Upon Cancellation.** If the Municipality terminates the PO for convenience, all work completed by Contractor to the satisfaction of the Municipality, and all pre-authorized work in progress as of the date of cancellation will be paid for by the Municipality in accordance with the prices in the PO provided that the Municipality shall in no event be liable to pay a total aggregate amount under the PO that exceeds the maximum PO value. The Municipality accepts that if work in progress is delivered to the Municipality in connection with a cancellation, it is delivered on an "as is" basis, and without any warranties from the Contractor.
10. **Liability.** Neither party shall be liable to the other party for lost profits, lost opportunity, special, consequential, incidental, exemplary or indirect costs from any cause whatsoever, even if advised of the possibility of such costs or damages. A party's indemnification obligations as set out in this Contract are excluded from this limit on liability.
11. **Indemnity.** Contractor shall indemnify and hold harmless Municipality, its employees, the mayor, councilors, officers and agents (collectively "Municipality Personnel") from and against any claims, demands, regulatory inquiries and related damages, losses, costs and expenses, including legal fees (collectively, "Claims and Costs") arising from: (i) negligent acts or omissions; (ii) infringement or alleged infringement of third-party intellectual property rights; (iii) personal injury (including bodily injury or death) or damage to property; (iv) breach of confidentiality or privacy provisions of the Contract; or (v) breach of applicable laws as each is attributable to the acts or omissions of Contractor,

its officers employees, directors, officers, subcontractors, suppliers and other representatives. Contractor shall have no obligation pursuant to this section to the extent that the Claims and Costs arise from the negligent acts or omissions of Municipality Personnel.

12. **Intellectual Property.** The Municipality is assigned all intellectual property rights in deliverables except to the extent the deliverables include proprietary items and materials that existed prior to the PO issue date (such pre-existing works are the “**Pre-Existing Materials**”). The Municipality is hereby granted a perpetual, paid-up, royalty free, irrevocable license to such Pre-Existing Materials to the fullest extent required by the Municipality to make use of the Work for the Municipality’s internal purposes and for any additional purpose as may be expressly contemplated by this Contract. Contractor agrees to execute any assignment or any other document necessary to give effect to this section.
13. **Governing Law and Competent Court.** The PO is governed by the applicable laws of the Province of Ontario and Canada, without regard to conflicts of laws principles. The parties expressly exclude application of the United Nations Convention on Contracts for the International Sale of Goods. All disputes between the Municipality and Contractor will be submitted to a competent court of the Province of Ontario and no other court.
14. **Miscellaneous.** Contractor is contracted as an independent contractor and not as agent, joint venturer or employee of the Municipality. Contractor shall at all times comply with applicable laws at Contractor’s sole expense. Any delay by a party in the exercise of any right or remedy provided herein shall in no event be deemed to be a waiver of such right or remedy. To be valid, any waiver must be made in writing expressly referencing the Contract. If any provision of the Contract is held to be invalid or unenforceable by a judicial or regulatory authority, the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable. If no feasible interpretation would save the provision, it shall be severed, and the remainder shall not be affected and shall be enforced as nearly as possible according to its original terms and intent. The Municipality may assign its rights and obligations under the Contract without requiring any notice to or consent from Contractor. Contractor may not assign or transfer any right or obligations hereunder without the prior written consent of the Municipality, which consent shall not be unreasonably withheld. The indemnity shall be in addition to and not in lieu of any insurance required to be provided by the Contractor in accordance with this Contract. The warranty, indemnity and other provisions reasonably intended to survive termination or expiration of the Contract shall survive. This Agreement may be executed by electronic signature, or signed by hand and scanned, and delivered in any number of counterparts which, together, shall constitute one and the same instrument. Once signed, a copy or electronic version of the document will have the same force and effect as the original document. Les parties ont accepté que ce document soit rédigé en anglais. The parties have agreed that this document be prepared in the English language.