

1. Application of these Standard PO Terms & Conditions:

These Standard Purchase Order Terms and Conditions (“T&C”), when incorporated by reference into any duly issued City of Merritt (the “City”) Purchase Order (a “PO”), shall be binding on the Supplier. The Supplier shall be considered to have accepted these T&C when: a) the Supplier is in receipt of a PO that states the T&C apply; and b) the Supplier commences the supply of goods and/or services stated on the PO.

2. Complete Agreement:

The PO, including these T&C, plus any other documents listed on the PO (“PO Contract Documents”), shall constitute the entire contract (“Agreement”) between the parties for the goods and/or services covered by the PO. No revisions or modifications of the terms of the PO shall be binding on the City unless given in writing by an authorized representative of the City and confirmed by a written amendment to the PO.

These T&C shall take precedence over any terms and conditions that may be contained in, or referenced on, a Supplier’s quotation unless noted otherwise on the PO.

3. Required Documentation:

Failure to meet the following documentation requirements may result in the goods being returned at the Supplier’s cost or invoices being rejected:

- a) The PO number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.
- b) A separate invoice must be generated for each shipment or delivery.
- c) A packing list is to be included with each shipment.
- d) Where applicable, serial numbers are to be shown on the invoice including serial numbers of trade-in equipment.
- e) The Supplier will provide the appropriate labels and Material Safety Data Sheets (MSDS) for WHMIS regulated products.
- f) No product containing asbestos shall be supplied at any time without written authorization.

4. Price and Price Adjustments:

The price(s) / rates(s) agreed to between the City and the Supplier, and stated on the PO, shall not be adjusted unless a written amendment to the PO has been issued by the City.

Where a “Not to Exceed”, “Maximum Remuneration”, or “Fixed Lump Sum Price Fee” amount is specified on the PO, the Supplier shall not be entitled any compensation above this amount whatsoever, unless a written amendment to the PO has been issued by the City.

Except as expressly provided in the PO or PO Contract Documents, the Supplier shall be solely responsible for all costs and expenses associated with supplying the goods or performing the services and the Supplier’s other obligations, including costs of manufacturing, assembly, storage, labour, supervision, management, overhead,

insurance, goods, transportation, travel, fuel, delivery, tools, supplies and materials, office expenses, brokerage costs, import duties and taxes (except GST and PST on the goods and the services as applicable).

Unless as otherwise noted on the PO, prices shall include delivery and carriage to the City of Merritt City Hall, 2185 Voght St, Merritt, BC as per the Incoterms 2020 definition "DDP" (Delivered Duty Paid).

5. Invoices & Payment:

All invoices shall be sent to Accounts Payable at: ap@merritt.ca and shall reference the PO number.

Invoices must provide a line item / detail on each separate good or service listed on the PO, along with the applicable price or unit as per the PO. Taxes must be shown separately on all invoices.

Invoices shall be paid within 30 calendar days of the date of invoice receipt, provided that the Supplier's performance obligations as stated on the PO Contract Document and invoice requirements set out herein have been met.

6. Substitutions:

The substitution of goods, products and/or materials listed in the PO or PO Contract Documents will not be accepted unless an authorized City employee provides confirmation in writing that the substitution will be accepted. Authorization must be obtained by the City in advance of supply. The City will generally not accept substitutions unless the substitution is equal or better in performance, durability, availability, or value.

7. Delivery and/or Completion:

Delivery of the goods and/or completion of the services will be made free and clear of all liens and encumbrances within the time frame, and to the destination as agreed on the PO (including Contract Documents).

In the event of failure to meet this condition, the City may, at its sole discretion, cancel the purchase of the goods and/or services without liability or penalty, and the Supplier will be held liable for any and all expenses or losses resulting from such failure. The City will also be entitled to the return of all monies paid by the City with respect to the purchase.

The Supplier will ensure and fully comply with the Transportation of Dangerous Goods Act and related regulations when shipping goods to the City.

8. Customs:

For any shipments originating outside of Canada, the Supplier shall attach all required customs documents to the shipment. Payment of duties will be as per the terms of the PO.

9. Order Fulfillment:

Time is of the essence. The Supplier must immediately advise the City contact person identified on the PO of a shortage or delay of any kind. If delivery of goods and/or services is not completed by the delivery date as stated in the PO or PO Contract Documents, then the City reserves the right to terminate the Agreement in whole or in part and to purchase substitute goods and/or services elsewhere and charge the Supplier with any incidental or consequential damages that might be incurred.

10. Inspection and Acceptance:

All goods and/or services may be subject to inspection and testing by the City and/or its representative and, in the event that the goods and/or services are defective in material or workmanship or otherwise not in accordance with the description or specifications stated in the PO or PO Contract Documents, the City will

have the right to reject the goods and/or services or require their correction.

The City will notify the Supplier of the rejection of any goods and/or services which are defective in material or workmanship or otherwise not in accordance with the description or specifications. All such rejected goods and/or services will be held subject to disposition at the Supplier's risk and expense. No acceptance by, or on behalf of, the City will release the Supplier of its obligations under guarantees as further stated hereunder.

Transfer of title will occur at time of final inspection and acceptance by the City.

11. Warranty:

Without limitation to any additional warranties provided by the Supplier, whether indicated on the PO / PO Contract Documents or otherwise provided, the Supplier warrants that:

- a) All goods/services shall be of merchantable quality and free from defects in workmanship and materials;
- b) All goods/services shall strictly conform to applicable PO Contract Documents, including any samples, specifications and drawings;
- c) All goods/services shall be fit for the purposes intended by the City;
- d) All goods/work shall be free and clear of liens, charges and encumbrances;
- e) All goods/services shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies;
- f) The shipping and handling of any hazardous materials will be made in accordance with all applicable laws and regulations; and
- g) The goods/services shall comply with all applicable environmental protection laws and regulations.

Unless a longer warranty period is specified on the PO / PO Contract Documents or is otherwise provided, the foregoing warranty shall be valid for 12 months from the date of delivery/completion and acceptance of the goods and/or services 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 goods and/or services furnished by the Supplier, or if the goods and/or services do not conform to the terms and conditions of the PO or PO Contract Documents, the City may at its option:

- a) Require the Supplier to promptly replace, re-design or correct the defective and non-conforming goods and/or services at no expense to the City, or
- b) The City may replace or correct the defective goods and/or services and charge the Supplier with all expenses incurred by the City.

12. CSA & Electrical Safety:

All goods supplied under this Agreement must meet or exceed CSA standards where this standard applies.

Any electrical equipment used in performance of the Agreement must be certified by an accredited certification organization acceptable to the City. All costs of approval will be at the Supplier's expense.

13. Software:

It is the Supplier's responsibility to ensure that the City has all licenses required to use any software that may be supplied by the Supplier pursuant to the PO.

14. Permits & Licenses:

The Supplier, their employees, agents and vehicles shall have and maintain valid permits and licenses as required by law for the execution of services detailed in the PO.

The Supplier shall conform to all federal, provincial, and City acts and regulations that may apply to the

operation of the PO. The Supplier is required to obtain and pay for all necessary permits, licenses and inspection fees.

Certified copies of required permits/licenses will be made available upon request by the City.

15. Insurance:

All Suppliers / contractors providing services to the City are required at a minimum to carry the following insurance:

Type of Insurance:	Limit of Liability:
Comprehensive General Liability, which includes: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; and • Cross Liability Clause. 	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 per occurrence

Any deductible or reimbursable clause contained in any policy shall not apply to the City, and shall be the sole responsibility of the Supplier / contractor.

16. WorksafeBC:

Any Supplier providing services to the City will strictly comply with all rules and regulations under the Worker's Compensation Act or any successor legislation.

The Supplier must, for the duration of the services, be registered as an 'Independent Business' with WorkSafeBC with a WorksafeBC Clearance Letter status showing the Supplier is "Active and in good standing". Additionally, the Supplier shall ensure WorksafeBC coverage is provided for the Supplier, all workers and any shareholders, directors, partners or other individuals employed or engaged in the performance of the services. If the Supplier is an individual or a partnership of individuals and does not have the benefit of mandatory workers compensation coverage under the Workers Compensation Act in British Columbia, the Supplier must apply for and maintain Personal Optional Protection under the Workers Compensation Act.

The Supplier agrees that it is the "Prime Contractor" 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.

17. Indemnification:

The Supplier shall defend, indemnify and hold harmless the City, its past and present elected officials, officers, employees and agents (the "Indemnitees") from and against all claims, demands, actions, proceedings and liabilities whatsoever, and all losses, damages, costs and expenses (including legal fees and disbursements on a solicitor and own client basis) incurred in connection therewith, resulting from the negligent acts, errors or omissions of the Supplier in its performance of the services under this PO, save and except to the extent that such claims, demands, actions, proceedings, liabilities, losses, damages, costs or expenses arise out of the negligent acts, errors or omissions of the Indemnitees and are actionable and sustainable as against the Indemnitees pursuant to British Columbia law.

For certainty, the Supplier agrees to indemnify and save harmless the Indemnitees and members of the public from any liability, loss, cost and expense arising either directly or indirectly, from breach of any warranty given by the Supplier hereunder.

The Supplier's obligations under this section do not limit or affect any other rights or remedies the City may

have against the Supplier in relation to the Supplier's performance or breach of the terms and conditions of this PO.

This section shall survive expiry or termination of this PO.

18. Liability for Breach:

In the event that the Supplier breaches the terms of this PO, and regardless of the City's rights under Section 17 herein, the Supplier shall be liable to the City for all direct damages, costs and expenses (including legal fees and disbursements on a solicitor and own client basis) incurred or suffered by the City as a result of the Supplier's breach.

19. Business Registration:

All Suppliers conducting services at City facilities shall have a valid City business license, if required as per City Bylaw requirements.

20. Supplier's Employees:

The Supplier represents and warrants to, and covenants with, the City that the Supplier and the Supplier's employees who perform the services, including the Supplier personnel, have and shall have the education, training, skill, experience and resources necessary to perform the services in accordance with the Agreement and the Supplier acknowledges and agrees that the City has entered into this Agreement relying on the Supplier's representations, warranties and covenants.

The Supplier's representatives shall be under the exclusive supervision of the Supplier. All responsibility and authority for hiring, training, supervision, direction, compensation, discipline, termination, and administration of the Supplier's representatives, and all cost or expenses related thereto, rest exclusively with the Supplier.

21. Waiver & Limitations of Liability:

The Supplier hereby waives and disclaims any right of action or claim against the City (other than for payment of the purchase price set forth on the PO) for any liability, loss, cost and expense arising directly or indirectly from its supply of the goods and/or services listed on the PO.

If, regardless of the foregoing, the City becomes liable on any basis to the Supplier, its liability shall not in the aggregate exceed the purchase price set forth on the PO.

22. Confidentiality:

Technical information, specifications, drawings, designs, building and floor plans and other documentation relating to the business or activities of the City disclosed by the City to the Supplier pursuant to this Agreement shall be held in strict confidence by the Supplier and shall remain the exclusive property of the City and may not be copied or reproduced without the express written consent of the City.

23. Conflict of Interest:

It is the Supplier's sole responsibility to disclose to the City if any City Council/Board member, or any City employee or agent involved in the award of the work under this Agreement (e.g. the request for quote process, or issue of the PO), has or will have a direct or indirect pecuniary interest in this order with the City.

24. Intellectual Property:

The Supplier shall defend, indemnify and hold harmless the City, its members, officers, employees, agents, clients, and the public from any expense, cost, loss, claim, damage, judgment or liability for infringement or alleged infringement of third party intellectual property rights including any patent, copyright, industrial design, trademark or trade secret with respect to the goods and/or services provided by the Supplier and their

process of manufacture. The Supplier shall at its own expense defend or assist in the defence of, at the City's option, any action in which such infringement is alleged.

25. Governing Law:

This Purchase Order will be governed by, and construed according to, the laws of the Province of British Columbia, Canada and the Supplier agrees to attorn to the courts of British Columbia.

26. Freedom of Information & Protection of Privacy:

The Supplier acknowledges that the City is subject to the *Freedom of Information and Protection of Privacy Act* (the "FIPPA"), that the City may be legally obligated to disclose to a person parts, or all, of this Agreement and any documents legally connected to this Agreement, and that the authority of the City to refuse to disclose a record containing third party confidential information is limited as set out in Section 21 of the FIPPA.

27. No Promotion of Relationship:

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.

28. Assignment:

No right of interest in this Agreement shall be assigned by either party without the written consent of the other and no delegation of any obligation owed, or of the performance of any obligation by either the City or Supplier shall be made without the written consent of the other party.

29. Changes/Modifications/Termination:

The City reserves the right at any time, to cancel or terminate this Agreement in whole or in part by written or verbal notice confirmed in writing or 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 Agreement, an equitable adjustment shall be mutually agreed in the price or delivery schedule, or both. No agreement or understanding to modify this Agreement shall be binding on the City unless it is confirmed in writing and authorized by the City's authorized employee.

30. Force Majeure:

The Supplier is not liable for failure to perform the obligations as set out in the Agreement as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, or act of foreign enemies ("Force Majeure"). If the Supplier asserts Force Majeure as an excuse for failure to perform their obligations, the Supplier must prove that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that the Supplier substantially fulfilled all non-excused obligations, and that the City was timely notified of the likelihood or actual occurrence of the event which invoked the force majeure.