

ARTICLE 1 – INTERPRETATION

1.01 Defined Terms

“**Conflict of Interest**” includes, but is not limited to, any situation or circumstance where the Supplier’s other commitments, relationships or financial interests (i) could or could be seen to exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgment; or (ii) could or could be seen to compromise, impair or be incompatible with the effective performance of its obligations under the Contract;

“**Contract**” means the purchase order for the Deliverables issued by the Purchaser to the Supplier (the “**Purchase Order**”), including these Purchase Order Terms and Conditions;

“**Deliverables**” means the goods and any related services as described in the Purchase Order;

“**Good(s)**” means supplies, equipment, materials, products, structures and fixtures to be supplied, delivered, installed or constructed;

“**Indemnified Parties**” means the Purchaser, its elected officials, directors, officers, agents, employees and volunteers;

“**Purchasing By-law**” means the procurement by-law approved by Purchaser of Owen Sound Council, as amended from time to time and includes procurement procedures and guidelines approved by the Purchaser.

“**Purchaser**” means The Corporation of the Purchaser of Owen Sound;

“**Purchasing Agent**” means the Purchaser’s Manager of Corporate Services or designate;

“**Rates**” means the price, in Canadian funds, to be charged for the Deliverables, as set out in the Contract, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes; (b) all labour and material costs; (c) all travel costs; (d) all costs associated with insuring, transporting and delivering the Deliverables to the Purchaser at its address specified on the Purchase Order; (e) all insurance costs; and (f) all other overhead, including any fees or other charges required by law;

“**Related Entities**” includes directors, officers, employees, agents, partners, affiliates, volunteers and subcontractors.

“**Requirements of Law**” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;

“**Service**” means a service of any description required in order to complete the Work, whether commercial, industrial, trade or otherwise, and includes all professional, technical and artistic service, the transporting, acquiring, supplying, storing and otherwise dealing in a Good;

“**Supplier**” means the supplier identified on the face of the Purchase Order.

ARTICLE 2– GENERAL TERMS

2.01 Governing Law

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

2.02 Entire Contract

The Contract, together with any additional documentation referenced in the Purchase Order, sets forth the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties. In the event of any ambiguity, conflict or inconsistency between these Purchaser Order Terms and Conditions and any terms and conditions contained in any acknowledgement, order or any other form issued by the Supplier, these Purchase Order Terms and Conditions shall prevail. Changes to the Contract shall only be made by the issuance of an amended Purchase Order by the Purchaser to the Supplier.

2.03 Acceptance

Where a public procurement process has been issued the RFT, RFP, RFPQ, RFQ or other document issued by the Purchaser (the "Tender") is deemed to form a part of the Purchase Order along with any award letter that may be issued, the Supplier's Tender Submission and any addendum or any other schedules to the Tender shall constitute the Contract between the Parties.

2.04 Notices

Notices shall be in writing and shall be delivered by mail, personal delivery or email and shall be addressed to the contact identified on the face of the Purchase Order.

2.05 Severability

If any term or condition of the Contract, or the application thereof, is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), shall not be affected.

2.06 No Indemnities from Purchaser

Nothing in the Contract, whether express or implied, will directly or indirectly increase the indebtedness or contingent liabilities of the Purchaser beyond the obligation to pay the Rates in respect of Deliverables accepted by the Purchaser.

2.07 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control, such as natural disasters, acts of war, insurrection and terrorism. If a party seeks to rely on a force majeure event, that party shall immediately notify the other party of the reason for and anticipated period of any delay.

2.08 Survival

This paragraph and paragraphs 2.01, 2.04, 2.05, 3.02, 3.04, 4.01, 6.02 shall survive the termination or expiry of the Contract, as shall any other provision which by its nature ought to reasonably survive such termination or expiry.

2.09 AODA

The Purchaser will promote, and incorporate, whenever possible, the requirements of the *Ontarians with Disabilities Act, 2001 (ODA)*, the *Accessibility for Ontarians with Disabilities Act, 2005 (AODA)*, and specifically, Ontario Regulation 429-07 and Ontario Regulation 191-11 made under the AODA in Procurement activities of the Purchaser, except where it is not practicable to do so.

ARTICLE 3 – RELATIONSHIP BETWEEN PURCHASER AND SUPPLIER

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement with any other party that would in any way interfere with the rights of the Purchaser under this Contract.

3.02 Supplier Not a Partner, Agent or Employee

The Supplier shall have no power or authority to bind the Purchaser or to assume or create any obligation or responsibility, express or implied, on behalf of the Purchaser. The Supplier shall not hold itself out as an agent, partner or employee of the Purchaser. Nothing in the Contract shall have the effect of creating an employment, partnership or agency relationship between the Purchaser and the Supplier or any of the Supplier's Related Entities.

3.03 Non-Exclusive Contract, Work Volumes

The Purchaser makes no representation regarding the volume of goods and services required under the Contract and reserves the right to contract with other parties for goods and services the same as or similar to the Deliverables.

3.04 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its Related Entities. The Supplier shall advise its Related Entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract.

3.05 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the Purchaser. Such consent shall be in the sole discretion of the Purchaser and subject

to the terms and conditions that may be imposed by the Purchaser. Nothing in the Contract, or in such consent, creates a contractual relationship between any subcontractor and the Purchaser.

3.06 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice to the Purchaser without delay of any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Purchaser to resolve any Conflict of Interest.

3.07 Contract Binding

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

ARTICLE 4 – PERFORMANCE BY SUPPLIER

4.01 Deliverables Warranty

The Supplier represents and warrants that the Deliverables

- (i) shall be provided diligently in a professional and competent manner by persons qualified and skilled in their occupation in accordance with: (a) the Contract; (b) Industry Standards; and (c) the Requirements of Law; and
- (ii) shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title. The Supplier represents and warrants that the use or sale of the Deliverables purchased under this Contract will not infringe any patent, copyright or trademark.

4.02 Delivery

Time is of the essence of the Purchase Order and if the delivery of goods or rendering of service is not completed by the time promised, the Purchaser will have the right to cancel this order effective on the Purchaser's written notice thereof. Supplier will notify the Purchaser promptly whenever it appears that it will not be able to make deliveries on any date(s) specified. Delivery will not be deemed to be complete until the goods have been received and inspected by the Purchaser.

4.03 Packaging and Risk

The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the Purchaser.

4.04 Inspection and Acceptance

Receipt of the Deliverables at the Purchaser's location does not constitute acceptance of the Deliverables by the Purchaser. The Deliverables are subject to the Purchaser's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the Purchaser, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the Purchaser in a rectification notice.

ARTICLE 5 – PAYMENT FOR DELIVERABLES

5.01 Payment According to Contract Rates

The Purchaser shall pay the Supplier for the Deliverables in accordance with the Rates within thirty (30) days of receipt by the Purchaser of a satisfactory and proper invoice from the Supplier requesting payment for Deliverables that have been received and accepted by the Purchaser.

Electronic funds transfer is the standard and preferred method of payment.

If prices are omitted from this Purchase order, the goods will be billed at prices not higher than the last price quoted or charged by the Supplier or prevailing market price, whichever is lower.

All payments shall be made in accordance with the Purchaser's Purchasing By-law in effect at the time of payment.

All invoices submitted by the Supplier must include the Supplier's business name, mailing address, and HST number, Supplier contact title, telephone number, and email address, invoice date, invoice number, payment terms (Net 30), due date, the Purchaser's name and address, Purchaser contact full name, project name and location, contract execution date, period during which the services and materials were supplied, itemized description, including quantity where appropriate, of the services and materials that were supplied, delivery date and delivery location(s), original contract value, revised contract value, total progress billed to date, less previous period progress billings, current period progress billing (amount invoiced, exclusive of HST), all applicable holdback deduction values, all applicable holdback release values, subtotal, less HST, the amount of HST value, shown separately, total amount payable, detailed breakdown of schedule of items and prices and supporting documentation, and where applicable, WSIB clearance certificate and statutory declaration of progress payment distribution by Supplier.

The Purchase Order number must appear on all documentation relating to the Contract, including, but not limited to, invoices and delivery/packing slips. Invoices that do not include the applicable Purchase

Order number, item number and order description shall not be processed and shall be returned to the Supplier until the appropriate information is provided.

Invoice to be received by Accounts Payable, electronic submission preferred at accountspayable@owensound.ca. Invoice submissions during the period of December 23 to January 1 of any given year will not be reviewed until regular business hours resume.

5.02 No Expenses or Additional Charges

The Supplier shall pay all applicable taxes and duties, including excise taxes, incurred by or on the Supplier's behalf with respect to the Contract. There shall be no charges payable by the Purchaser to the Supplier other than the Rates. Unless otherwise specifically provided for in this order, the Supplier shall pay all freight and other transportation charges and insurance covering the goods until they are delivered to the destination indicated.

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

6.01 Insurance

The Supplier shall put into effect commercial general liability and non-owned and owned automobile insurance, in a form acceptable to the Purchaser, in an amount not less than \$2,000,000, with the Purchaser as an additional insured. The Supplier will also put into effect such other additional insurances as required by the Purchaser. The Supplier shall provide the Purchaser with evidence of insurance upon request.

6.02 Supplier Indemnity

The Supplier agrees to indemnify and save harmless the Indemnified Parties from all losses, claims, damages, actions, causes of action, costs and expenses that the

Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including for infringement of third-party intellectual property rights or for third party bodily injury (including death), personal injury and property damage, arising or occurring, directly or indirectly, by reason of any act or omission of the Supplier or its Related Entities, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties.

6.03 WSIB

The Supplier shall comply with all requirements of the Workplace Safety and Insurance Act, 1997, or any successor legislation, its regulations and any directive issued by the Workplace Safety and Insurance Board ("WSIB") including providing to the Purchaser as required during the term of the Purchase Order, any reports or proof of good standing with the WSIB.

ARTICLE 7 – TERMINATION

7.01 Immediate Termination of Contract

The Purchaser may immediately terminate the Contract upon giving notice to the Supplier for any reason, notwithstanding that the Supplier might not be in default under the Contract, and in such event the Purchaser shall be liable to the Supplier only for the payment of the Rates in respect of the Deliverables accepted by the Purchaser up to the date of termination.