

Purchase Order Terms and Conditions

1. Unless waived or otherwise agreed in writing by the District of North Cowichan, this Purchase Order and its terms shall not be altered, amended, varied, or, modified. Any inconsistent or additional terms or conditions proposed by the Vendor are hereby rejected and shall not bind the District of North Cowichan in any way, unless otherwise specified on the front of this Purchase Order.
2. Payment for satisfactory goods and/or services shall be made in Canadian funds unless otherwise specified on the front of this Purchase Order, net 30 days from date of delivery or invoice (whichever is later) unless otherwise agreed. Cash discounts are to be calculated from date of receipt of acceptable invoices by the District of North Cowichan.
3. Unless otherwise specified, the price specified on the front of this Purchase Order shall be the complete cost (i.e. amount without taxes) to the District of North Cowichan and includes all fees, royalties, licenses, levies and charges of every description (including charges for crating, boxing and cartage). Information on the front of this Purchase Order shall indicate the Goods and Services and B.C. Provincial Sales taxes applicable.
4. Time of delivery and/or installation shall be of the essence. Failure to deliver or install in the quantities and with the specifications described on the delivery dates specified shall entitle the District of North Cowichan at its sole option to cancel any portion or all of the shipment without liability or cost, in addition to any other rights of the District of North Cowichan.
 - a) Regardless of payment, all goods and services shall be subject to inspection and approval by the District of North Cowichan without limitation as to time. The District of North Cowichan may reject the goods and/or services, in whole or in part, and/or terminate the contract if, in the opinion of the District of North Cowichan, the goods and/or services, in whole or in part, are unsatisfactory, non-conforming to order or specification, or if the Vendor has breached any term or condition of this Purchase Order.
 - b) In the case of rejected goods, the District of North Cowichan may either return those goods to the Vendor at the Vendor's risk and expense or, advise the Vendor to remove the rejected goods, at the Vendor's risk and expense, whereupon any

responsibility of the District of North Cowichan with respect to the rejected goods shall absolutely cease.

- c) In the case of rejected services, the District of North Cowichan may either require the Vendor to re-perform the services at the Vendor's expense or terminate the contract without payment or obtain the services from another source at the Vendor's expense.
5. In addition to the District of North Cowichan's rights at law, of the Purchase Order, and any other Vendor warranties, and regardless of prior payment, the Vendor shall, at its own expense, replace any goods or parts thereof or redo any services which become defective or unusable as a result of faulty manufacture, design, material or workmanship for a period of one (1) year from date of delivery or installation (whichever is later), unless otherwise specified on the front of this Purchase Order.
6. INDEPENDENT CONTRACTOR: If providing Services, the relationship of Vendor to the District of North Cowichan will be that of an independent contractor and not an employee, partner or agent. Vendor shall not enter into any contract or commitment in the name of or on behalf of the District of North Cowichan or bind the District of North Cowichan in any respect whatsoever. Vendor confirms and agrees that there are no employee related benefits or fringe benefits of any kind receivable in connection with the performance of the Services. The Vendor, its subcontractors and assignees are solely responsible for making contributions for Employment Insurance, WorkSafe BC, Canada Pension Plan, employee income tax deductions (submitted directly to the government), insurance costs or other similar levies. Vendor shall indemnify and save harmless District of North Cowichan, its directors, officers and affiliates from and against all payments, costs, damages, expenses, interest, penalties and other liabilities assessed against, paid or incurred by the District of North Cowichan or its affiliates in connection with such contributions or payments.
 - a) Vendor shall ensure that its employees conform to the District of North Cowichan's policy and procedures concerning workplace behaviours, health and safety requirements.
 - b) Payment Holdback: the District of North Cowichan reserves the right to retain a 10% builder's lien holdback of all payments for Vendors On-Site Work and subcontractor charges until expiry of the statutory lien period.
 - c) Waste Management and Clean-Up: On-Site Work shall be confined to the work/storage area(s) designated by the District of North Cowichan. The Vendor shall

- i. Ensure that all transportation, storage and/or disposal of materials is performed in accordance with applicable environmental laws and all current waste management procedures of District of North Cowichan;
 - ii. Ensure that District of North Cowichan 's premises are kept tidy and free at all times from the accumulation of waste material, scrap, surplus material and debris resulting from the On-Site Work and that all accumulations are separated in designated barrels and bins; and
 - iii. Upon completion of the On-Site Work and/or when directed by District of North Cowichan, promptly remove any temporary work and all accumulation of waste material, scrap, surplus material and debris and leave District of North Cowichan's premises in a clean condition. The Vendor must receive approval from the District of North Cowichan before using any of the District of North Cowichan's pollution control or waste disposal facilities.
7. This Purchase Order shall not be assigned or sub-contracted by the Vendor, in whole or in part, without the express written consent of the District of North Cowichan.
8. Goods are to be delivered D.D.P. (destination duty paid), *Incoterms 2010* and includes unloading at destination. It is the Vendor's responsibility to arrange full and complete protection of shipment while in transit to the District of North Cowichan.
9. All Packages, packing slips, invoices, correspondence, customs documentation and freight bills of lading shall have the District of North Cowichan's complete Purchase Order number predominantly displayed and packing slips shall accompany all shipments. Invoices will not be processed for payment until all items invoiced are received and approved by the District of North Cowichan.
 - a) For all goods and materials subject to Workplace Hazardous Material Information System (WHMIS) legislation, Material Safety Data Sheets (MSDS) shall accompany the goods or materials and shipping documents.
 - b) Dangerous goods shall be shipped only in compliance with Canadian Transportation of Dangerous Good (TDG) Regulations, 49 CFR U.S. Hazardous Materials Regulations, and all other environmental laws, rules, regulations and procedures, where applicable.
10. The following warranties shall apply to any goods or services supplied or delivered:
 - a) All terms, conditions, warranties, and undertakings implied by the Sale of Goods Act (British Columbia) shall apply, save as expressly qualified on the front of the Purchase Order;

- b) All services provided shall be performed in a good and workmanlike manner by qualified personnel;
- c) All goods shall be new, latest model and/or latest version unless otherwise specified on the front of the Purchase Order;
- d) All goods shall be free and clear of any liens, claims, security interests or rights in favour of any third person;
- e) The Vendor shall comply with all applicable laws, ordinances, rules, building codes, regulations and bylaws, whether Federal, Provincial or Local;
- f) The Vendor shall pay its employees, subcontractors and suppliers as and when due, and make all necessary payments, withholdings and remittances to all applicable governmental agencies, including WorkSafe BC Board, Revenue Canada and Canada Pension Plan, and shall comply with all applicable employment and workplace safety standards;
- g) All electrical and electronic goods and components ordered shall conform to the standards of the British Columbia Electrical Safety Branch or have been approved by the Canadian Standards Association (CSA);
- h) The Vendor at its own expense, shall be solely responsible for obtaining and maintaining all necessary building and other permits, licences or fees and approvals for performance of its obligations, including any final occupancy permits, required in order for the District of North Cowichan to use and enjoy the subject goods and services;
- i) The Vendor covenants that there has been no violation or infringement of trade marks, patent, copyright or any other intellectual property right of another person in the manufacturer, production or sale of the goods, materials or services supplied under this Purchase Order.

11. The Vendor shall indemnify, defend and save harmless the District of North Cowichan from any and all claims, suits, actions, causes of actions, administrative proceedings, damages, losses, liabilities and expenses (including legal fees on a solicitor/client basis) arising out of any act, omission, breach or default arising out of the performance or non-performance of this Purchase Order except to the extent such loss or damage is caused by the negligence of the District of North Cowichan. The provisions of this indemnity are paramount to any insurance requirements herein and shall survive the term of this Purchase Order.

12. The District of North Cowichan is not responsible for any risk of loss or damage to the equipment supplied until clear and unrestricted title to such equipment is transferred to the District of North Cowichan. Clear and unrestricted title for any item or equipment

purchased shall pass to the District of North Cowichan at the D.D.P. destination point as shown herein or if required, when the installation is completed and accepted.

13. The Vendor shall maintain insurance coverage in an amount and form reasonably acceptable to the District of North Cowichan. The insurances shall at a minimum include Commercial General Liability, Automobile Liability and WorkSafe BC Insurance. As applicable the Vendor shall maintain Professional Liability, Property All Risks, Transit / Marine Insurance. The insurances carried by the Vendor are in support of the indemnity provisions herein and do not restrict or minimize the liabilities of the Vendor to the District of North Cowichan or any third parties.
14. Limitation of Liability: Notwithstanding anything else contained in this Order, neither party shall be liable to the other, for any losses, damages, costs or expenses of an indirect, incidental, special or consequential nature, including, but not limited to, losses of use, profit or anticipated business.
15. DISPUTES: All disputes concerning questions of fact(s) which may arise under this Order and which are not disposed of by mutual agreement of the parties may, upon mutual agreement of the parties, be referred to binding arbitration in accordance with the Commercial Arbitration Act of British Columbia. In the meantime, Vendor shall diligently proceed with performance of this Order.
16. GOVERNING LAW AND JURISDICTION: This Order shall be governed by and interpreted in accordance with the laws of British Columbia, and the parties hereby expressly attorn to the jurisdiction of the courts of British Columbia with respect to all matters relating to this Order.
17. NOTICES: Any notice or communication under this Order will be effective only if it is in writing and delivered in person, by overnight courier service or facsimile transmission, or mailed by registered or certified mail (return receipt requested, postage prepaid) or by E-mail to the addressees address set forth in this Order or to such other address as the addressee may designate to the sender in accordance with this Section. All notices and communications will be deemed given when delivered in person or overnight courier service, three days after mailing if mailed, or when sent by facsimile transmission when transmission confirmation is received or if sent by E-mail receipt is deemed at completion of transmission.
18. WAIVER: District of North Cowichan's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege, or District of North Cowichan's waiver of any breach hereunder, shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

19. SEVERABILITY: If any term of this Order is deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Order.