

APPENDIX A: Purchase Order Terms and Conditions



PURCHASE ORDER Terms & Conditions

1. These Terms and Conditions form part of every purchase order ("PO") issued by Windsor-Essex County Health Unit ("Health Unit"). Subject to section 2 below, these Terms and Conditions supersede and take precedence over any and all previous verbal or written arrangements in connection with the subject matter of the PO and no other terms and conditions shall apply to the PO, unless agreed to in writing by the Health Unit. No variation or amendment of the PO, including these Terms and Conditions, is authorized unless such variation or amendment has been approved by the Health Unit in writing.
2. If the PO references a Request for Submission, Request for Proposal, Request for Tender or Request for Quotation or has been issued by the Health Unit in connection with such a process, then in addition to these Terms and Conditions, the provisions set out in that solicitation shall also apply. In the event of any conflict with these Terms and Conditions, the provisions of the solicitation shall take precedence over these Terms and Conditions.
3. The Supplier shall be deemed to accept these Terms and Conditions upon the Supplier commencing any performance of that which is contemplated by the PO (the "Work Requirements and Deliverables").
4. The PO shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
5. The Supplier shall at all times comply with all applicable legal requirements, including all federal, provincial, municipal and other laws, regulations and codes which are in any way applicable or related to the PO.
6. The Supplier represents and warrants that in fulfilling the Supplier's obligations under the PO, the Supplier will not infringe the rights of any third party.
7. Any activity on Health Unit premises (interior or exterior) required in connection with the Work Requirements and Deliverables shall be between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday only, excepting statutory holidays.
8. Time shall be of the essence in respect of the Supplier's fulfillment of the Work Requirements and Deliverables. In the event of Supplier's failure to fulfill the Work Requirements and Deliverables as and when specified, the Health Unit shall have the option to cancel the PO, or

any part thereof immediately upon notice to the Supplier, without prejudice to any other rights and remedies the Health Unit may have.

9. The Health Unit shall be entitled to make changes at any time and from time to time to the Work Requirements and Deliverables of any PO, including changes to any specifications. In the event of any additional cost or savings resulting from such changes, the Supplier shall notify the Health Unit thereof in writing and obtain written approval from the Health Unit before proceeding with the changes.
10. The Supplier represents and warrants that all goods and materials that are a part of the Work Requirements and Deliverables shall: be new; be fit for their purpose; be of merchantable quality; be free from defects in materials and workmanship; be used, applied and installed in accordance with manufacturers recommendations; and conform in all respects to all specifications and requirements stated on the PO. Where services are included in the Work Requirements and Deliverables, all such services shall be fulfilled to the standard of a prudent owner.
11. Title to any goods forming part of the Work Requirements and Deliverables transfers to the Health Unit, upon acceptance by the Health Unit. Until that point, goods are at the risk of the Supplier.
12. All work related product and all intellectual property including all legal, equitable and moral rights developed or produced by the Supplier or in any way arising in connection with the Work Requirements and Deliverables, shall immediately upon coming into existence be owned by and vest in the Health Unit. The Supplier waives and shall ensure that the Supplier's employees, subcontractors, and subcontractors' employees waive, in favour of the Health Unit, all moral rights in respect of the Work Requirements and Deliverables. The Health Unit hereby grants a non-exclusive license to the Supplier to use the intellectual property in future work undertaken by the Supplier.
13. Fulfillment of Work Requirements and Deliverables shall be subject to inspection and test by the Health Unit at any time and place and if found not to be in accordance with the requirements of the PO, without prejudice to any other rights or remedies that the Health Unit may have, the Health Unit shall be entitled to reject and/or return any goods or materials at Supplier's risk and expense and the Supplier shall reimburse the Health Unit for any costs in that regard incurred by the Health Unit.
14. The Supplier shall not permit nor cause anything to be done which would allow any lien, lis pendens, judgment or certificate of any court or any mortgage, charge or encumbrance of any nature whatsoever to be imposed upon or to remain upon any one or more properties of the Health Unit. In the event of notice or registration of any of the foregoing encumbrances, the Supplier shall, at its own expense, immediately cause the same to be discharged failing which and without prejudice to any other rights or remedies that the Health Unit may have, the Health Unit shall have the right to set off an amount to completely satisfy such encumbrance (including any legal fees and charges) against any amounts due to the Supplier.
15. All Supplier personnel involved in the fulfillment of the Work Requirements and Deliverables shall be under the control and direction of the Supplier and shall not be employees or agents of the Health Unit.

16. Any Supplier personnel attending at any Health Unit premises shall: have identification visibly displayed on their person that has been issued by the Supplier, verifying: name of Supplier; name and photograph of such personnel; job function, and the date of issuance of the identification document; and shall comply with the reasonable policies and directions from time to time of the Health Unit.
17. The Supplier shall not enter into any subcontracting arrangements in the fulfillment of the Work Requirements, other than as pre-approved in writing by the Health Unit and when so pre-approved, the Supplier shall require such subcontractors not to do or omit to do anything that would be a breach of the PO and the Supplier shall remain fully responsible for all subcontracting arrangements.
18. The price payable indicated on the face of the PO is the final, unconditional price and, except as otherwise explicitly provided in writing, includes the cost of all crating, packing, shipping, permits, licenses, certifications, inspections, labour, equipment, tools, transportation, travel materials and supplies and any other incidentals required to fulfill the Work Requirements and Deliverables and the Supplier shall not be entitled to charge the Health Unit any additional amounts.
19. Unless otherwise stated, prices and all funds payable are in Canadian dollars.
20. The Supplier shall send any invoices related to the PO to 1005 Ouellette Avenue, Windsor, Ontario, N9A 4J8, or such other address as directed by the Health Unit. Invoices must include: related PO number; name of the Health Unit; name of the Supplier; date of the invoice; amount payable with applicable taxes shown separately; address to which payment is to be remitted; a description of Work Requirements and Deliverables and:
 - (a) For Work Requirements and Deliverables that are services, including construction, the invoice shall provide details of activities including who, what, when, where and for how long.
 - (b) For Work Requirements and Deliverables that are goods or materials, the invoice shall provide details of quantities and a breakdown of unit and total prices.
 - (c) If shipments originate outside of Canada, the Supplier must furnish properly certified Canada Customs invoices in quadruplicate, made up in accordance with the Canada Customs requirements.
21. Payments under any PO shall be subject to the following holdbacks:
 - (a) Any statutory holdback entitlements or requirements.
 - (b) Hold back amounts equal to a reasonable estimate of the cost to the Health Unit of rectifying any part of the Work Requirements and Deliverables that do not conform to the PO requirements, until such time as the deficiencies have been addressed to the Health Unit's reasonable satisfaction.
22. Terms of payment shall be net 45 days from the date of receipt of the invoice or net 45 days from receipt of or fulfillment of the Work Requirements in accordance with the PO, whichever is later.
23. In the event that the Supplier disputes the amount of payment made by the Health Unit in respect of any invoice submitted, the Supplier shall provide written notice to the Health Unit of such dispute within 60 days after payment becomes due and/or refusal to pay by the Health Unit. In the event the Supplier fails to provide such written notice, the Supplier shall not be

entitled to pursue its claim and the Health Unit shall be deemed to have satisfied any and all obligations that it may have in respect of the invoice to which the dispute relates.

24. The Health Unit shall be entitled to set off any amounts owing from the Health Unit to the Supplier against any amounts from time to time owing from the Supplier to the Health Unit.
25. No payment by the Health Unit for invoices rendered by the Supplier shall constitute acceptance of the Work Requirements and Deliverables in whole or in part which is not in accordance with the terms and conditions of the PO, nor shall any such payment be construed as acceptance by the Health Unit of any deficiency.
26. The Health Unit shall have the following termination entitlements:
 - (a) The Health Unit may, at its sole option and for any reason or no reason whatsoever, terminate the PO in whole or in part, without liability, damage, cost or further obligation, upon 7 days' written notice to the Supplier. In such event, the Health Unit will pay the Supplier for the Work Requirements satisfactorily provided and accepted by the Health Unit to the effective date of termination.
 - (b) The Health Unit may terminate the PO immediately on notice to the Supplier in the event of cause. Any such termination shall be without liability, damage, cost or further obligation to the Health Unit. Cause shall include: if the Supplier is in default of any material obligation; if the Supplier is in default on another contract with the Health Unit entitling the Health Unit to terminate that other contract; if the Supplier, a director of the Supplier and/or any key personnel of the Supplier are convicted of a *Criminal Code* offence; or if the Supplier becomes insolvent.
27. The Supplier shall carry and maintain at all times while the whole or any part of the Work Requirements and Deliverables are outstanding, adequate insurance, which, at a minimum, shall include public liability and property damage insurance in an amount not less than \$2,000,000 and shall forthwith provide the Health Unit proof of insurance upon request by the Health Unit. Without limiting the foregoing, such insurance coverage shall include comprehensive general liability, contractual liability, personal injury, and contingent liability with respect to subcontractors.
28. The Supplier shall carry and maintain at all times while the whole or any part of the Work Requirements and Deliverables are outstanding, all required Workplace Safety and Insurance Board coverage and shall forthwith provide the Health Unit proof of such coverage upon request by the Health Unit, or alternatively, evidence that the Supplier is not required to be and is not a registrant under the *Workplace Safety and Insurance Act, 1997*.
29. In the event that a person is injured and/or events occur through or connected with the Supplier's fulfillment of the Work Requirements and Deliverables, the Supplier shall forthwith deliver written notice of the same to the Health Unit.
30. In the event of strikes, accidents, unforeseen contingencies or events outside of the Health Unit's control which make fulfillment of the Work Requirements and Deliverables impossible, impractical or reasonably undesirable to the Health Unit, the Health Unit shall have the option on written notice to the Supplier, to immediately suspend fulfillment of the Work Requirements and Deliverables.

31. In the event of a dispute arising in connection with the PO, the Health Unit may, in its sole and absolute discretion, refer the dispute to a confidential, binding arbitration pursuant to the *Arbitration Act, 1991*. In the event that the Health Unit refers a dispute to arbitration, the Supplier shall be bound to arbitrate such dispute with the Health Unit and further, any decision shall be final and binding and no appeal shall lie therefrom.
32. The Supplier shall indemnify and hold harmless the Health Unit, its directors, officers, employees, agents, tenants and the heirs and assigns of the aforementioned persons or bodies, from and against all liabilities, losses, costs, sums, damages, expenses, obligations, demands, suits, claims, actions and other proceedings (including legal, accounting and other professional fees and charges), whether direct, indirect or consequential suffered or incurred by any one or more of them by reason of: any inaccuracy in any information given by the Supplier to the Health Unit; any negligent acts or omissions of the Supplier or those for whom the Supplier is responsible, including employees, other agents and subcontractors; and/or default, breach or violation of the terms of the PO by the Supplier or those for whom the Supplier is responsible, including employees, other agents and subcontractors. For greater clarity, the foregoing indemnity obligations are not limited to third party losses and specifically include the first party losses of the Health Unit.
33. The Supplier acknowledges that the collection, use and disclosure of information contemplated by a PO is subject to applicable privacy and access to information legislation, including the *Municipal Freedom of Information and Protection of Privacy Act*.
34. The Supplier shall treat all Health Unit information confidential, including without limitation that the Health Unit has issued a PO to the Supplier and the Supplier shall not disclose such confidential information to any third party or use it for any purpose, either during the currency of the PO or thereafter, except as may be necessary in the performance of the Supplier's obligations, unless the Supplier has the Health Unit's prior written consent or it is otherwise required by law.
35. The Health Unit may in its sole discretion verify and monitor compliance with the PO and the Supplier shall reasonably cooperate in all such efforts. Without limiting the generality of the foregoing, the Supplier authorizes all persons to respond to any verbal and/or written inquiries that the Health Unit may make pertaining to the Supplier. Further, without limiting the generality of the foregoing, the Supplier authorizes all such persons to provide details about the Supplier including, without limitation, the quality of the Supplier's work and releases such persons from any claims in connection therewith.