

PURCHASE TERMS AND CONDITIONS

Version: 2024-09

1. **The Purchase Contract.** The purchase contract is comprised of the following documents, where such documents exist: these Purchase Terms and Conditions, the bid request document (the RFT, RFP or RFQ, or other solicitation document as applicable, such solicitation document referred to as the “**RFx**”) as amended by addenda and all documents referenced the RFx, the Vendor’s bid document, and any additional terms the parties have agreed in writing to incorporate into the purchase contract. Together, these documents are the “**Contract**”. In the event of a conflict or inconsistency among the documents, the provisions of the document that first appears on the foregoing list will apply. The Contract cancels and supersedes all prior agreements or communications on the subject matter.
2. **The Work.** The goods, services, and service deliverables to be supplied or performed by Vendor are described in the Contract documents. The goods, services and deliverables are collectively, the “**Work**”.
3. **Vendor Personnel.** Vendor may engage others to assist it in the performance of the Work including subcontractors. Vendor remains liable under this Contract and otherwise at law for the acts and omissions of its employees, agents, suppliers, licensors, subcontractors and any other Vendor representative in the performance of Vendor’s obligations. The foregoing persons are collectively “**Vendor Personnel**”.
3. **Delivery Dates.** Vendor must deliver and perform the Work on the mutually agreed delivery dates. In the event of a delay for any reason, the Township may, acting reasonably, cancel the Township’s order for the delayed Work without any Township liability for such cancellation including for any work-in-progress regardless of the state of completion.
4. **Shipping of goods (where goods being purchased).** Where goods are being supplied, unless otherwise specified in another Township-issued Contract document, Vendor will ship the goods Delivery Duty Paid (DDP-Incoterms, 2018) (equivalent to FOB Destination), to the place of destination specified by the Township. Title to the goods will pass to the Township upon acceptance by the Township as set out in these terms.

5. **Inspection and acceptance of goods and deliverables.** Unless otherwise specified in a Township-issued Contract document, the Township shall have 15 business days following receipt of the Work to inspect and accept the delivered Work as being in conformance with the requirements of the Contract. No title shall transfer, or payment be owed, for the Work where the Township rejects the Work within such time period.
6. **Invoicing and Payment.** The Town will issue payment for the Work within 30 calendar days from the later of the Township's receipt of a proper invoice for accepted Work or from acceptance of the Work. Invoices must be submitted to the Township of East Garafraxa, 065371 Dufferin County Road 3, Unit 2 East Garafraxa, ON L9W 7J8 to the attention of Accounting and describe the Work which is being invoiced. In the alternative to mailing an invoice, an electronic invoice may be submitted to Accounting@eastgarafraxa.ca. Invoices must include Vendor's GST or HST and applicable PST registration numbers. Where requested by the Township, Vendor must provide the information necessary to support electronic payments to Vendor.
7. **Warranty.** 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 Township's acceptance, delivered Work must be and remain free from defects in design, material, and workmanship and conform to written specifications specified in the Contract for a period of 12 months or such other longer period as may be specified in the Contract (the "**Warranty Period**").
8. **Warranty Remedy.** Work discovered within the Warranty Period as failing to comply with the warranty requirements may be, at no charge to the Township: (i) returned for a full refund or credit of amounts paid by the Township for the defective goods, (ii) repaired, (iii) replaced; (iv) re-performed by Vendor, using alternate personnel if instructed by the Township, with any shipping and transportation costs and risk of loss and damage to materials in transit borne by Vendor. Repaired and replaced goods or re-performed services shall be warranted as set forth in this Section.
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10. **No Conflict of Interest.** Vendor represents and warrants that, to the best of its knowledge, neither it or any Vendor Personnel are aware of any facts that give rise to an apparent, potential or actual conflict of interest that may cast doubt on Vendor's impartial and unbiased performance of the Work (a "Conflict of Interest"). Should Vendor become aware of any such facts during the term, Vendor must promptly disclose the Conflict of Interest to the Township. A failure to promptly disclose a Conflict of Interest or to take steps, as required by the Township, to manage a Conflict of Interest, will constitute a default of a material Vendor obligation under this Contract.
11. **Termination for Convenience.** The Township may at any time and for its convenience, in whole or in part, terminate the Contract or suspend the performance of Work. Where performance of the Work is suspended by the Township for its convenience, the Work shall be deemed terminated for convenience on the 30th day of such suspension unless otherwise agreed by the parties in writing.
12. **Termination for Default.** Unless a shorter notice period is specified in the Contract, either party may terminate the Contract where the other party is in default of its material commitments or obligations and has failed to cure such default within 30 days after being notified by the non-defaulting party. For certainty the following shall be considered a default under this Contract:
- any evidence that Vendor is insolvent or unable to pay its debts, or has filed for, or is contemplating entering into, bankruptcy proceedings which, notwithstanding any term to the contrary, shall entitle the Township to immediately terminate the Contract upon notice to Vendor;
 - a Conflict of Interest that cannot be managed or mitigated to the Township's reasonable satisfaction, which notwithstanding any term to the contrary, shall entitle the Township to immediately terminate the Contract upon notice to Vendor.
13. **Payments Due Upon Termination.** If the Township terminates the Contract for the Township's convenience, the Township's liability and Vendor's exclusive remedy and entitlement is as described in this Section. Upon termination for convenience:

- all Work completed and delivered to the satisfaction of the Township as of the date of the Township's notice will be paid for by the Township in accordance with the prices in the Contract;
- Work-in-progress shall be paid for based on a pro-rata calculation of price depending on the degree of completion of the affected Work, to be justified by Vendor and agreed to by the Township.
- In no event shall the Township be liable to pay (a) together with all other payments already made by the Township under the Contract, a total aggregate amount that exceeds the maximum Contract value (where none is specified then it is the amount set aside for the Contract in the Township's current annual budget) (the "**Maximum Contract Value**"); or (b) for any lost profit or avoidable costs associated with unperformed Work.
- The Township accepts that if work in progress is delivered to the Township in connection with a termination, it is delivered on an "as is" basis, and without any warranties from the Vendor.

If the Township terminates the Contract for default, the Township shall have no obligation to pay for Work that has not yet been delivered and accepted pursuant to the Contract.

14. **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. In no event shall the Township's aggregate amount payable including any liability to the Vendor for any cause whatsoever, including damages under this Contract, for negligence or any other principle of law, exceed the Maximum Contract Value.
15. **Indemnity.** Vendor shall indemnify and hold harmless the Township and its mayor, councillor, officers, agents, employees and volunteers from and against any third party action, claim, demand and related Township costs, charges, losses, and expenses (including legal, expert and consultant fees) for: (a) infringement of third-party intellectual property rights; or (b) for bodily injury (including death), personal injury and property damage to the extent resulting from act or omission of Vendor or Vendor Personnel; (c) negligent acts or omissions of Vendor or Vendor Personnel; and (d) Vendor's failure to

make employee payroll deductions and pay remittances as required by law. This indemnity shall be in addition to and not in lieu of any insurance required to be provided by the Vendor in accordance with this Work.

16. **Intellectual Property.** The Township is assigned all intellectual property rights in deliverables except to the extent the deliverables include proprietary items and materials that existed prior to the Contract effective date (such pre-existing works are the “**Pre-Existing Materials**”). Unless otherwise expressly agreed in writing by the Township, the Township is granted a perpetual, paid-up, royalty free, irrevocable license to such Pre-Existing Materials to the fullest extent required by the Township to make use of the Work for the Township’s internal purposes and for any additional purpose as may be expressly contemplated by the Contract. Vendor agrees to execute a document confirming the assignment or any other document necessary to give effect to this section.
17. **Notice of Contract Extension.** Where the Contract specifies a contract term with optional extensions, the Township may extend the Contract term by providing written notice of the extension to the Vendor. Vendor shall be deemed to accept the extension to the term if it does not object to the extension within 5 days of receipt.
18. **Compliance with laws and Township policies.** Vendor must comply with applicable Canadian federal, provincial, and local laws, regulations, and orders including those relating to workplace health and safety and privacy. Vendor must also comply with applicable Township policies, including policies dealing with employee workplace conduct, whether or not such policies expressly apply to contractors of the Township. Vendor will be responsible for its own contributions to the Workers Safety and Insurance Board (or equivalent) and shall indemnify and hold harmless the Township for Township losses or damages arising from a Vendor failure to make such contributions.
19. **Governing Law and Competent Court.** The Contract 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 Works for the International Sale of goods. All

disputes between the Township and Vendor will be submitted to a competent court of the Province of Ontario and no other court.

20. **Notices.** Each party shall deliver notices under this Contract in writing and addressed to the other party to the contacts at the addresses set forth on the first page of this Contract (or to such other person and address that may be designated by the receiving party from time to time in accordance with this section). Each party shall deliver notices by personal delivery, regular mail, nationally recognized overnight courier (with all fees prepaid) or email. Notices shall be deemed received on the date of delivery by hand; 7 calendar days following posting in regular mail; upon confirmed delivery by the courier service; and, if by email, when the recipient party confirms by whatever means that it has received the notice. Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt by the receiving party and (b) if the party giving the notice has complied with the requirements of this section.
21. **Miscellaneous.** All amounts specified in the Contract are in Canadian dollars unless the Township explicitly accepts a different currency. Vendor is contracted as an independent contractor and not as agent, joint venturer or employee of the Township. Any delay by a party in the exercise of any right or remedy provided shall in no event be deemed to be a waiver of such right or remedy. To be valid, a 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 Township may assign its rights and obligations under the Contract without requiring any notice to or consent from Vendor. Vendor may not assign or transfer any right or obligations hereunder without the prior written consent of the Township, which consent shall not be unreasonably withheld. Any assignment without the Township's consent shall constitute a default and entitle the Township to terminate the Contract. The warranty, indemnity and other provisions reasonably intended to survive termination or expiration of the Work shall survive.