

City of Nelson Terms and Conditions for Purchases of Goods and Services

1. **Application of Terms and Conditions**

Unless superseded by other related documents and/or agreements, these terms and conditions are included in our purchase order document and will apply to and be binding on the Contractor for the provision of any goods and services to the City.

2. **Definitions**

For the purposes of these terms and conditions, unless the context otherwise requires:

- a) "Owner", "City", "The City", "Corporation", "Nelson Hydro", "City of Nelson" means The Corporation of the City of Nelson
- b) "Must", "mandatory", "require", or "shall" means a requirement that must be met
- c) "Contract" means the written form of agreement between the Owner and the Contractor, or, in the absence of a written form of agreement, a Purchase Order serves as the Contract.
- d) "Contractor" means the successful vendor providing goods and/or services.
- e) "Services" means the work being performed by the Contractor for the Owner.

3. **Business Licence**

Contractors who own or operate a business within the City of Nelson shall have a valid City of Nelson Business License or hold a current West Kootenay Inter-Community Business Licence. Applications are available on the City's website at <http://www.nelson.ca/166/Business-Licence>.

4. **WorkSafeBC**

Contractors providing services to the City will strictly comply with all rules and regulations under the Workers Compensation Act or any successor legislation and will provide a letter of good standing from WorkSafeBC prior to commencement of work at the designated site(s).

5. **Insurance Requirements**

Based on the nature of the services provided, certificates of insurance requested by the City shall be provided.

The Contractor shall obtain and maintain in force during the period of service, and for a minimum of (twelve) 12 months following completion of the works, with an insurance company a policy of insurance acceptable to and approved in writing by the Owner, the following insurance with limits on an occurrence basis not less than those shown in respective items following:

- a) Commercial general liability insurance providing coverage not less than five million (\$5,000,000.00) dollars each occurrence, all inclusive against liability for bodily injury, death, or property damage on an occurrence basis and Completed Operations Liability coverage not less than five million (\$5,000,000.00) dollars each occurrence inclusive against liability for bodily injury, death and/or damage to property of others arising out of the existence of any condition in the completed work on any installation or repair operations during the period of one year next ensuing after acceptance of the completed work by the Owner.
- b) Automobile liability insurance for standard non-owned, hired vehicles, unlicensed/off highway use and leased vehicles providing coverage not less than five million (\$5,000,000.00) dollars each occurrence, all-inclusive against liability for bodily injury, death or property damage on an occurrence basis.
- c) Automobile insurance for public liability and property damage providing coverage not less than five million (\$5,000,000.00) dollars each occurrence, all-inclusive on owned vehicles.
- d) Other insurance liability coverages may be applicable depending on the nature of the services to be provided, which will be assessed on a case by case basis by the City prior to PO issuance.
- e) Notwithstanding anything contained elsewhere herein, it is understood and agreed that the Owner shall not be liable for any loss or damage to the Contractor's equipment including loss of use thereof. Evidence of coverage of the Contractor's equipment should be provided.
- f) Provide a waiver of subrogation for the Owner.
- g) The deductible or reimbursement for any policy required under this section shall not exceed ten thousand dollars (\$10,000.00) per claim. The Contractor and/or their subcontractor(s), as may be applicable, shall be responsible for any deductible amounts under the policies of coverage/insurance.
- h) Claims Handling – The Contractor shall be responsible for the prompt investigation, settlement and payment to claimants for the deductible portion of all insured losses up to a maximum of ten thousand dollars (\$10,000.00) per claim or occurrence until or unless advised otherwise.

The Contractor shall establish a claims and incident reporting procedure with the Owner for all claims and take directions from the Owner or Insurers on any claims for damage, injury or infringement that are likely to exceed ten thousand dollars (\$10,000.00) per claim or occurrence.

- i) The “**Corporation of the City of Nelson**” shall be named as the additional insured in the commercial general liability policy. It is the responsibility of the Contractor to ensure that each sub-contractor complies with the same insurance conditions as the Contractor, with the exception of course of construction and boiler and machinery insurance. Each policy shall provide that no cancellation or material change in the policy shall become effective until after thirty (30) days notice of such cancellation or change shall have been given to the Owner by registered mail, and the Contractor will upon demand of the Owner deliver over to the Owner all such policy or policies of insurance and the receipt for payment of premium thereon; and should the Contractor neglect so to obtain and/or maintain in force any such insurance as aforesaid or delivery such policy or policies and receipts to the Owner, then it shall be lawful for the Owner to obtain and/or maintain such insurance, and the Contractor hereby appoints the Owner his true and lawful attorney to do all things necessary for this purpose. All monies expended by the Owner for insurance premiums under the provisions of this clause shall be charged to the Contractor.

Those providing consulting services must have errors and omissions Insurance. The Contractor providing these services shall, at the Contractor's expense, establish and maintain errors and omissions insurance to the following minimum requirements:

MINIMUM
INSURANCE

Consulting services for projects <u>not exceeding</u> \$500,000 in value	\$500,000.00
Consulting services for projects <u>between</u> \$500,000 and \$1 million in value	\$1,000,000.00
Consulting services for projects <u>exceeding</u> \$1 million in value	\$2,000,000.00

The maximum deductible in all categories shall be \$50,000.00

The Contractor's professional errors and omissions insurance shall remain in force for the life of the project and for twelve (12) months after Owner with prior notice of changes and cancellations:

“The Insurer of the insured Contractor shall provide written notice to be delivered by hand, or sent by registered mail to the Owner at least thirty (30) days in advance of the activation date of any proposed cancellation, change or amendment restricting coverage under this policy.”

6. Indemnification of Corporation

Notwithstanding the provision of any insurance coverage by the Owner, the Contractor shall indemnify and save harmless the Owner, its elected officials, officers, employees, agents, solicitors, successors, assigns or representatives from and against any losses, claims, damages, actions and causes of action, costs (including legal costs), expenses, judgments and proceedings arising out of or in connection with any error, or negligent or malicious act or omission, by the Contractor or any of its officers, agents, representatives, employees or sub-consultants, except to the proportionate extent of any contributorily negligent or wrongful act or omission of the Owner, or any of its elected officials, officers, employees, agents, solicitors, successors, assigns or representatives. The terms and conditions of this indemnity provision shall survive the completion of all Services and the termination of this Contract for any reason.

The Contractor shall indemnify the Owner from third party liability with respect to health care costs recoverable under the Health Care Costs Recovery Act arising out of the Contractor's performance of the Contract Work.

7. Confidentiality, Ownership and Use of Documents and Materials

- a) The Owner is subject to the British Columbia Freedom of Information and Protection of Privacy Act. Subject to Sections 12 through 22 inclusive of the Act, any reports and or documents produced by or on behalf of the Owner are subject to public review under the Act.
- b) The Contractor shall keep confidential for an unlimited period of time all communications, plans, specifications, reports or other information used in connection with the project except those requiring disclosure by operation Owner.
- c) The Contractor shall, by employing written agreements, bind all employees, sub-consultants and agents to the obligations required by this Article.
- d) The Contractor agrees that all studies, reports, software, drawings, plans, models, designs, photographs, specifications, tender documents and other materials prepared or developed by or on behalf of the Contractor which are employed in connection with the project are, and shall remain the property of the Owner. The Owner reserves the ownership and all copyright, patent and trademark rights therein and in the work executed there from, all of which may only be used by the Contractor with the prior written Contract of the Owner.
- e) All concepts, methods, products or processes produced by or resulting from the services rendered by the Contractor in connection with the project or which are otherwise developed or first reduced to practice by the

Contractor in the performance of the services, and which are patentable, capable of trademark or otherwise, are and shall remain the property of the Owner, and the Contractor shall not use, infringe upon or appropriate such concepts, products or processes without the prior written agreement of the Owner.

8. Dispute

The Contractor acknowledges that it has complied, and will continue to comply during the performance of this purchase order, with the provisions of all applicable third party contracts and all applicable laws in accepting this purchase order.

The laws of British Columbia govern this agreement, the courts of British Columbia have exclusive jurisdiction over any disputes under it, and all provisions of the International Sale of Goods Act (BC) are specially excluded.

9. Termination

The City reserves the right at any time to cancel or terminate this purchase order in whole or in part, by written or verbal notice, confirmed in writing.

The City also reserves the right to make changes in any one or more of the following:

- Quantity
- Specifications
- Methods of shipment or packing
- Place or timing of delivery

If any such change causes a change in the cost of, or the time required for, performance of this purchase order, an equitable adjustment shall be made in the price or delivery schedule, or both.

No agreement or understanding to modify this purchase order shall be binding on the Owner unless in writing and signed by the Owner's authorized agent.

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11. Purchase Order Number

A City of Nelson purchase order number is required, and must appear on all bills of lading, waybills, invoices, progress billing, packing slips, containers, packages and correspondence.

The Contractor, by execution of this purchase order, or by commencement of performance, enters into a binding Contract of purchase and sale with the Owner for the supply of all goods and services as referenced on the face of this purchase order, subject to these terms and conditions.

The Owner's placement of this purchase order with the Contractor is expressly conditioned upon the Contractor's acceptance of all the terms and conditions contained on, attached to, or expressly incorporated by reference in this purchase order.

Any terms and conditions proposed by the Contractor that are inconsistent with, or in addition to, the terms and conditions of this purchase order are void and of no effect, whether provided in an invoice, confirmation of purchase or other communication.

12. Invoicing and Payment

- All invoices shall be emailed to ap@nelson.ca
- Invoices are paid net 30 days
- All invoices must bear a unique reference (invoice) number

13. Force Majeure

- a) No party shall be deemed to be in breach of this Contract or otherwise liable to another party in any manner whatsoever for any failure or delay in performing its obligations under this Contract reasonably due to Force Majeure.
- b) If either party's performance of its obligations under this Contract is affected by an event of Force Majeure, then:
 - i. it shall give written notice to the other parties, specifying the nature and extent of the event of Force Majeure, as soon as reasonably practicable after becoming aware of the event of Force Majeure;
 - ii. performance of such obligation(s) shall be deemed suspended but only for a period equal to the delay reasonably caused by such event;
 - iii. it shall not be entitled to payment from any of the other parties in respect of extra costs and expenses incurred as a result of the event of

Force Majeure; and

- iv. it shall use all reasonable diligence to mitigate the cause and the result of the event of Force Majeure and to remedy the situation and resume its obligations under this Contract.
- c) Notwithstanding the obligations of a party affected by an event of Force Majeure pursuant to Section 13 b), if the event of Force Majeure renders it impossible or impractical for the Contractor to provide the supply in accordance with this Contract for a period of at least 14 days, the Owner may terminate this Contract upon notice delivered to the Contractor at any time following the expiration of such period of 14 days.