



Purchase Order GENERAL CONDITIONS

VERSION 1.0

PURCHASE ORDER GENERAL CONDITIONS

1.0 General Conditions

- 1.1 Interpretation "**acceptable**" or "**satisfactory**" or words of similar effect means acceptable or satisfactory to Metrolinx.
 - 1.1.2 "**Claim**" shall have the meaning as described in Section 6.1 hereof.
 - 1.1.3 "**Claims Notice**" shall have the meaning as described in Section 6.1 hereof.
 - 1.1.4 "**Corporation**" means Metrolinx, a Crown agency established by the *Metrolinx Act, 2006* (Ontario).

- 1.1.5 “**Purchase Order**” means the agreement to be entered into between the Vendor and Metrolinx upon acceptance by Metrolinx of the proposal delivered by the Vendor to Metrolinx, of which these General Conditions form an integral part.
- 1.1.6 “**Vendor**” means the person identified as such on page 1 of the Purchase Order.
- 1.1.7 “**Damage**” shall have the meaning as described in Section 6.2 hereof.
- 1.1.8 “**Events of Default**” shall have the meaning as described in Section 5.1 hereof.
- 1.1.9 “**Place(s) of Work**” means various premises of Metrolinx, which are the subject of this Purchase Order, as more particularly described in the Specifications and Drawings hereto.
- 1.1.10 “**Total Purchase Order Price**” means the total price for the Work as noted in the Purchase Order.
- 1.1.11 “**Work**” means the supply and delivery of goods and or services as described in the Purchase Order.

1.2 Enurement

The Purchase Order shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

1.3 Assignment

The Purchase Order, and any part thereof, shall not be assigned, or delegated by the Vendor without the prior written consent of Metrolinx.

1.4 Notices

Any notices, orders, decisions, directives or communications given by one party to the other (except telephone notices to commence the Work on any particular day) shall be in writing and shall be delivered to (i) the Vendor to the address as set out on the Purchase Order, or (ii) Metrolinx, to 277 Front Street West, Toronto, Ontario, Canada and shall be deemed to have been received by the Vendor on the day delivered to the Vendor by hand or by e-mail transmission or other form of recorded transmission or, if mailed, on the sixth day next following the day on which it was mailed.

1.5 Further Assurances

The parties shall, with reasonable diligence, do all things and provide all reasonable assurances as may be required to consummate the transactions contemplated by the Purchase Order, and each party shall provide further documents or instruments

required by the other party as may be reasonably necessary or desirable to effect the purpose of the Purchase Order and to carry out its provisions, whether before or after the completion of the transactions contemplated by the Purchase Order.

1.6 Entire Agreement

The Purchase Order constitutes the entire agreement between the parties relating to the subject matter of the Purchase Order and, except as stated in the Purchase Order, contains all the representations, warranties, covenants and agreements of the respective parties relating to the subject matter of the Work. There are no oral representations, warranties, covenants and agreements by the parties of any kind. The Purchase Order may not be amended or modified in any respect except by written agreement signed by the parties. In the event that circumstances require an amendment to the Purchase Order, the parties will use their best efforts to mutually agree to any required changes.

1.7 Applicable Law

1.7.1 The Purchase Order shall be interpreted in accordance with and be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

1.7.2 Subject to the provisions herein, the *Sale of Goods Act* (Ontario) applies to the Purchase Order insofar as any part of the Purchase Order relates to goods.

1.8 Nature of the Relationship

The parties acknowledge that the Vendor is an independent Vendor and neither it nor any employee hired by it are employees of Metrolinx. The Vendor shall hire such staff as it considers appropriate to perform its obligations under the Purchase Order. Metrolinx does not have the right to hire such employees, to supervise them, to control their work or to discharge them. Metrolinx shall not have any responsibility for determining or paying the compensation of such employees. Metrolinx and the Vendor hereby disclaim the creation of a general agency, limited agency, partnership, joint venture, master/servant relationship or employer/employee relationship. The powers and obligations of Metrolinx and the Vendor are therefore restricted expressly to those provided for in the Purchase Order and Metrolinx and the Vendor agree that no representations will be made or acts undertaken by either of them which could establish or imply any apparent relationship of agency, partnership or employment and neither party shall be bound in any manner whatsoever by any agreements, warranties, representations or actions of the other party to such effect.

1.9 Time

Time is of the essence in the performance of the parties' respective obligations.

1.10 Acceptance of Goods

1.11.2 Any goods supplied that are not in accordance with the requirements of the Purchase Order will be returned to the Vendor at the Vendor's expense.

1.11 Title and Risk of Loss

1.11.1 Title to all goods furnished under the Purchase Order shall be free and clear of all liens, charges, or other encumbrances.

1.11.2 Unless the parties expressly agree to provide for earlier passage of title, title to the goods shall pass to Metrolinx upon delivery of the goods to the designated Metrolinx Place of Work.

1.12.2 Risk of loss of or damage to the goods shall remain with the Vendor, and shall pass to Metrolinx upon delivery of the goods to the Metrolinx designated Place of Work.

1.12.3 The Vendor shall be liable for all costs up to the full replacement value of the goods prior to passage of title of the goods to Metrolinx. Goods which, prior to delivery to Metrolinx, become damaged from any cause whatsoever, shall be made good at the expense of the Vendor except that in the event that, and to the extent that, negligence on the part of Metrolinx or its employees or representatives causes the above-mentioned damage, Metrolinx shall accept responsibility and reimburse the Vendor for the price of necessary repairs. In either event the time for delivery shall be adjusted accordingly.

1.12.4 The Vendor shall take reasonable and proper care of all goods, title to which is vested in Metrolinx, while the same is in, on or about the plant and premises of the Vendor or otherwise in his possession or subject to his control and shall be responsible for any loss or damage resulting from his failure to do so other than loss or damage caused by ordinary wear and tear.

1.12 Harmonized Sales Tax ("HST")

HST applies for the purposes of the Purchase Order. In the event that any relevant taxing statute is amended with the effect that HST would not be applicable, the parties shall amend the Purchase Order accordingly.

1.13 Method of Payment

1.13.1 Payment for Work rendered to the satisfaction of Metrolinx shall be made in arrears, within thirty (30) calendar days of receipt of detailed invoices for Work completed. Invoices should be submitted monthly. Each deliverable (including H.S.T. for that good or service) is to be a separate line item.

1.13.2 Invoices must be submitted in duplicate, must show full particulars, description of goods, quantity, rate and charge for each item, contact name and delivery location.

- 1.13.3 Invoices must show the name and postal address of the Vendor to whom the account is payable and the office where such payment is to be directed.
- 1.13.4 It is understood that the Purchase Order is based on reimbursement for actual Work performed or rendered by the Vendor.
- 1.13.5 The Vendor shall not perform any Work under the Purchase Order which would cause the total cost to exceed the Total Purchase Order Price, unless an increase is so authorized by Metrolinx and effected by a written amendment to the Purchase Order.
- 1.13.6 Where goods are shipped F.O.B. Vendor's dock via a common carrier, the Vendor must make a reasonable purchase order with the carrier and must give immediate notice of shipments to Metrolinx.
- 1.13.7 When transportation charges have been prepaid on orders shipped F.O.B. Vendor's dock, the original freight, cartage or express receipt must accompany the invoice, and the freight charges must be shown as a separate item on the invoice.
- 1.13.8 Invoices for labour and materials must give details of quantities and prices of materials and the number of hours worked with the rates per hour.
- 1.13.9 Invoices for rental of equipment must give the commencement date of rental, the duration of rental and the rental rates.
- 1.13.10 Invoices must be typed or printed in ink.

2.0 Representations and Warranties of the Vendor

The Vendor represents and warrants that:

2.1 Status

If the Vendor is a corporation, the Vendor has been duly incorporated and organized, is validly existing under the laws of its jurisdiction of incorporation and has not been dissolved.

2.2 Capacity

The Vendor has the capacity and authority to enter into the Purchase Order and to perform the obligations under the Purchase Order.

2.3 Authorization

The entering into, execution and delivery of the Purchase Order and the performance by the Vendor of its obligations hereunder has been duly authorized by all necessary proceedings.

2.4 Conflict with Other Agreements

The entering into, execution and delivery of the Purchase Order does not and will not result in a breach of and/or constitute a default under, or create a state of fact, which after notice or lapse of time or both, or otherwise, would constitute a default under any term or provision of the constating documents of the Vendor, the by-laws or resolutions of the Vendor or any agreement or instrument to which the Vendor is a party or by which it is bound.

2.5 Workplace Safety and Insurance

The Vendor is registered as an employer pursuant to the *Workplace Safety and Insurance Act* (Ontario) and has completed all filings and paid all assessments as required pursuant to that Act and the regulations thereunder.

2.6 Tax Statutes

The Vendor is in full compliance with all tax statutes administered by the Ministry of Finance for Ontario and that, in particular, all returns required to be filed under all provincial tax statutes have been filed and all taxes due and payable under those statutes have been paid or satisfactory arrangements for their payment have been made and maintained.

3.0 Covenants of the Vendor

3.1 Compliance with Laws

The Vendor will comply with all applicable federal, provincial and municipal laws, regulations, orders, by-laws and ordinances, including without limitation laws relating to workplace safety and insurance, occupational health and safety and employment standards, and shall obtain all necessary licences, permits and authorizations necessary to carry out the Work. Without limiting the generality of the foregoing, the Vendor specifically covenants that it shall comply in all regards with the requirements of the *Occupational Health and Safety Act* (Ontario) ("**OHS**A") and its own health and safety program to take all steps reasonable in the circumstances to ensure the health and safety of all workers for which it has responsibility under OHS A. The Vendor covenants to maintain and strictly enforce its health and safety program. Recognizing that Metrolinx may also have obligations as an "employer" pursuant to OHS A, the Vendor further covenants to provide such information within such time frames as may be required in order to allow Metrolinx to fulfill its obligations pursuant to OHS A, including, without limitation, the obligation to notify the Director under OHS A in the event of an accident causing personal injury.

3.2 Supervision

The Vendor shall provide its employees with the supervision required to complete the Work to the satisfaction of Metrolinx. In the event that Metrolinx determines that any employee of the Vendor is causing or is responsible for a situation which affects the lawful or safe operation of the Place of Work, the Vendor shall remove the employee forthwith at the request of Metrolinx.

3.3 Records

The Vendor shall maintain such accurate records relating to the Work, including daily reports describing equipment used, staffing levels and type of work, as may be required to substantiate all invoices submitted to Metrolinx for payment.

3.4 Insurance

3.4.1 The Vendor shall maintain insurance of such types and in such amounts as is commercially reasonable for the business operated by the Vendor, and for the Work required by the Purchase Order.

3.4.2 The Vendor shall, within five (5) Working Days, provide evidence of such coverage upon the request of Metrolinx.

4.0 Conditions in Favour of Metrolinx

4.1 Additional Payments

The Total Purchase Order Price shall not be increased or decreased by reason of any increase or decrease in the cost of labour, materials, tools or equipment required by the Vendor to complete the Work.

4.2 Vendor Representatives

Prior to the commencement of the Work, the Vendor shall furnish the names and telephone numbers of the Vendor's representative(s).

5.0 Default By Vendor

5.1 Events of Default

5.1.1 The Vendor shall be in default under the Purchase Order on the occurrence of any of the following events ("**Events of Default**"):

- (a) if any representation or warranty made by the Vendor herein is or becomes incorrect or untrue or any statement or other document heretofore or hereinafter furnished by or on behalf of the Vendor pursuant to or in connection with the Purchase Order proves to have been false in any respect at the time as of which the facts therein set forth were stated or certified, or proves to have omitted any substantial material fact; or
- (b) the Vendor does not complete the Work in a timely manner or the Vendor does not observe or perform any of its obligations under the terms of the Purchase Order; or
- (c) the Vendor ceases or threatens to cease to carry on its business; or
- (d) the Vendor becomes insolvent, bankrupt, makes a proposal or files an assignment for the benefit of creditors under the *Bankruptcy and*

Insolvency Act (Canada) or similar statute, including without limitation the *Companies Creditors Arrangement Act* (Canada); a petition in bankruptcy is filed against the Vendor or steps are taken under any legislation by or against the Vendor seeking liquidation, winding-up or dissolution of the Vendor; or

- (e) a receiver, receiver and manager or trustee is appointed in respect of the Vendor; or
- (f) the holder of a security interest takes possession of all or a substantial part of the Vendor's property or undertaking.

5.2 Rights upon Default

If at any time the Vendor fails to complete the Work as required, Metrolinx shall have the right to take such action to complete the Work in respect of such period. The Vendor shall indemnify Metrolinx for any cost or expense incurred by Metrolinx for the Vendor's failure to comply with its covenants herein, as provided in Article 6 hereof. In addition, Metrolinx may deliver a written notice to the Vendor which describes the Event of Default relied upon, and which further provides that unless such Event of Default is waived by Metrolinx or cured within a five (5) day period, Metrolinx shall have the right to terminate the Purchase Order and/or select and appoint a replacement Vendor to complete the Work for the balance of the term of the Purchase Order on such terms and conditions as may be acceptable to Metrolinx or, in its sole discretion, may complete the Work utilizing its own resources.

5.3 Other Rights

Upon the occurrence of an Event of Default, Metrolinx will have, in addition to the rights specifically provided in the Purchase Order, all rights given to it by statute or by common law. No such right shall be exclusive of or dependent upon any other right and one or more of such rights may be exercised independently or in combination from time to time.

5.4 Deficiency

Notwithstanding the exercise of any rights in Section 7.0 hereof, the Vendor will remain liable to Metrolinx for fulfilment of any obligations which are outstanding following any Event of Default.

6.0 Indemnification

6.1 Indemnification for Claims

6.1.1 The Vendor shall hereby indemnify, hold Metrolinx harmless and, where required by Metrolinx, defend Metrolinx in respect of the amount of any claim, loss, cost, expense, liability, fine, penalty, interest, payment or damage (including reasonable counsel fees) (hereinafter collectively referred to as the "**Claim**") incurred by or asserted against Metrolinx

collectively resulting from or in connection with the breach of any of the representations and warranties made by the Vendor herein or the breach or non-fulfilment of any of the covenants, conditions and agreements made by the Vendor herein, including without limitation any failure by the Vendor to complete the Work as required by the Purchase Order.

- 6.1.2 If Metrolinx determines that it is entitled to indemnification under this Section 6.0 it shall give the Vendor notice of the Claim (a "**Claim Notice**") and the provisions of Section 6.0 shall apply.

6.2 Damage to Metrolinx Property

The Vendor hereby indemnifies, defends and holds Metrolinx harmless for all loss or damage suffered by Metrolinx to any of its property arising as a result of the wilful or negligent act or failure to act of the Vendor or any of its employees, servants or agents ("**Damage**").

6.3 Right to Set-off

In the event that there is a Claim under Section 6.0 or 8.4 or Damage under Section 6.2 hereof, Metrolinx shall have the right to set-off the amount of such Claim or loss or damage against any amounts owing to the Vendor by Metrolinx in respect of the Work, provided that Metrolinx shall deliver a Claims Notice in respect of a Claim or Damage at least three (3) days prior to setting-off the amount of the Claim or Damage against any amounts owing to the Vendor.

7.0 Termination of Purchase Order

- 7.1 Metrolinx may, at any time, by giving thirty (30) days written notice to that effect, terminate any portion of the Purchase Order.
- 7.2 The Vendor will, upon receipt of such notice, cease all Work, as indicated and on the date of termination indicated in the notice.
- 7.3 Metrolinx's obligation to make payment to the Vendor for the terminated work shall cease when payment up to and including the day set in the notice has been made.

8.0 Warranty

- 8.1 The Vendor represents, warrants and covenants:
- 8.1.1 That all workmanship shall be in compliance with the requirements of the Purchase Order; and
- 8.1.2 That all goods shall be in compliance with the requirements of the Purchase Order and be free from defects in design, material, workmanship, manufacture, fabrication, packaging, shipment and delivery.

- 8.2 The express warranties contained herein are in addition to all other warranties and conditions, express or implied, including all legal and statutory warranties, all warranties arising at law, warranties of merchantability and fitness for a particular purpose, and warranties of the Vendor.
- 8.3 If, within twenty-four (24) months of acceptance of the goods by Metrolinx (the "**Warranty Period**"), the Work supplied by the Vendor or any part thereof becomes defective or fails due to any default by the Vendor in fulfilling the requirements of the Purchase Order including, without limitation, improper, faulty or defective design, materials, workmanship, manufacture, fabrication, packaging, shipment or delivery, then the Vendor, upon notification in writing from Metrolinx, shall forthwith repair or remedy every such defect or failure, or replace the goods without cost (including, without limitation, transportation cost) to Metrolinx.
- 8.4 In addition to the warranties and conditions implied by the *Sales of Goods Act* (Ontario), Vendor represents and warrants that there are no patents, trademarks, copyrights or other rights restricting the use, repair or replacement of the goods, or any part thereof, furnished under the Purchase Order and hereby agrees to indemnify, defend and save harmless Metrolinx from and against all Claims by whomsoever made, filed or prosecuted in any manner by reason of such use, or replacement of the goods being a violation of any patent, trademark or other right.
- 8.5 Metrolinx shall provide such reasonable information, access and cooperation as is required to permit Vendor to expeditiously correct any defect identified during the Warranty Period. During the Warranty Period, Vendor shall maintain detailed replacement records and shall forward this information to Metrolinx on a monthly basis (unless otherwise agreed by the parties).
- 8.6 In the event Vendor fails to proceed promptly with the correction of any identified defect, then, Metrolinx shall have the right to repair, remedy or replace the goods on its own or through a third party, and the cost thereof shall be charged to Vendor.
- 8.7 The Vendor shall cause those warranties that are provided that extend beyond the Warranty Period, be assigned to Metrolinx. Should there be any claim under the said warranties after the expiration of the Warranty Period, such claim shall be made and processed directly by Metrolinx with the relevant Vendor. The Vendors' warranties shall also pass to Metrolinx in the event that Vendor is unable to complete its obligations under the Purchase Order. In any event, the Vendor shall make provision in the Purchase Order for all warranties to be directly assigned to Metrolinx.
- 8.8 Warranty support shall be inclusive of all labour, materials, equipment, tools, spare parts, travel and any and all other costs relating to the Vendor's correction of a defect.

9.0 Changes in Work

- 9.1 Metrolinx may, at any time after the execution of the Purchase Order, make changes to the Work of the Purchase Order by written amendment to the Purchase Order.

- 9.2 The value of any such change shall occur by one, or a combination of, the following methods:
- 9.2.1 By unit prices agreed upon; or
 - 9.2.2 by cost with a fixed percentage of 10% for the Vendor's profit and overhead.

10.0 Vendor Work Performance Rating

- 10.1 Metrolinx shall, during the term of the Purchase Order, maintain a record of the performance of the Vendor in completing the Work for Metrolinx. This information shall be used to complete a "Purchase Order Performance Appraisal" report, a copy of which will be forwarded to the Vendor upon completion of the Work. Refer to the Attachments for a sample Purchase Order Performance Appraisal report. Interim "Purchase Order Performance Appraisal" reports may be issued, as deemed appropriate by Metrolinx, at any time during the term of the Purchase Order.
- 10.2 The overall history of the Vendor in performing work for Metrolinx will be considered in the evaluation of future bids from the Vendor.
- 10.3 Non-compliance with the Purchase Order requirements will be identified to the Vendor.
- 10.4 The information contained in the "Vendor's Performance Review" may be provided to the Ministry of Transportation and other government agencies, and such performance reviews may be relied upon to disqualify a company from future work.

11.0 Purchase Orders

- 11.1 The Purchase Order, upon acceptance by the Vendor or its duly authorized agent, shall serve as a written memorandum of the complete Purchase Order between the Vendor and the Corporation and, upon acceptance by the Vendor, the Vendor shall be deemed to covenant to comply with the conditions herein.
- 11.2 In the event that unauthorized deliveries are made in advance of the delivery date specified, Metrolinx may return any such goods at the Vendor's expense.
- 11.3 Substitutions are not permitted without the written approval of Metrolinx.
- 11.4 The Vendor must communicate promptly with Metrolinx for further instructions if it is unable to supply the Work as specified.
- 11.5 A detailed packing slip must accompany each shipment.
- 11.6 The Purchase Order number must be shown on all packages, bills of lading, invoices and other relevant documents.
- 11.7 The Vendor acknowledges it has read and understands the Metrolinx Vendor's Conflict of Interest Policy (the "**Policy**"), dated October 17, 2017. Further, the



Vendor agrees to comply with the Policy and any other Purchase Order obligations specific to conflict of interest under existing purchase orders, including the Purchase Order. The Vendor agrees to declare any potential or perceived conflict of interest to Metrolinx in accordance with the Policy.