

PURCHASE ORDER TERMS AND CONDITIONS SUPPLY OF GOODS AND/OR SERVICES

APPLICATION

These Purchase Order Terms and Conditions apply to all procurements unless contradictory terms are contained in the Request for Tenders or Request for Proposals.

1.0 DEFINITIONS

1.1 In this Purchase Order (unless the context otherwise requires):

"Background IP" means any intellectual property owned or licensed by a party which that party makes available, contributes, brings to or uses in connection with this Purchase Order.

"Business Day" means any day excluding a Saturday or Sunday or statutory holiday in the Province of Ontario and the places where the Services are being provided hereunder, and also excluding any day on which the principal chartered banks located in the City of Toronto are not open for business.

"City" means The Corporation of the City of Guelph.

"Confidential Information" includes information (including Personal Information), whether oral, written, visual, electronic, or in any other form, relating in any way to this Purchase Order and the City's information made available to the Supplier at any time in connection with this Purchase and the Goods and/or the Services, which is identified as confidential or that would reasonably be considered as being confidential; but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Purchase Order;

- (b) is in the Supplier's possession without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Supplier; or

- (c) has been independently developed by the Supplier or acquired from a source which was not subject to a duty of confidentiality to the City.

"Contract Documents" includes the following:

- (a) The procurement documents, if any;
- (b) These terms and conditions;
- (c) The scope of work and specifications; and,
- (d) The purchase order.

"Customs Duties" shall have the meaning in Section 7.8.

"Defect" or **"Defective"** with respect to:

- (a) Goods: means non-conformity to the quantity, quality, specifications, and/or other requirements set out in this Purchase Order; and

- (b) Services: means non-conformity with Sections 8.1 and 8.3 of these Terms and Conditions.

"Delivery Date" means the delivery date specified on the Purchase Order.

"Delivery Point" means the place for delivery of the Goods specified on the Purchase Order.

"Goods" means supplies, materials, equipment or other things (if any), specified in the Purchase Order (including any part of the goods specified).

"Intellectual Property Rights" includes all industrial and intellectual property rights whether protected by statute, at common law or in equity, including all copyright and similar rights, trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered and unregistered trademarks, circuit layout designs and rights in relation to circuit layouts;

"Invoice" means an invoice submitted by the Supplier in accordance with Article 7.0.

"Personal Information" means all information and data pertaining to an identifiable individual other than the name, business telephone number and business address of such individual as an employee of an organization.

"Personnel" means directors, officers, employees, agents, suppliers, subcontractors or any other entity that forms part of that person's supply chain, but a reference to the City's Personnel excludes the Supplier.

"Price" means the price or rates specified as such in this Purchase Order.

"Purchase Order" means the purchase order for Goods and/or Services issued by the City to the Supplier containing, amongst other things, a description of the Goods and/or Services and includes these Terms and Conditions.

"Services" means, without limitation, the labour, work, efforts, repairs, maintenance, quality control, quality assurance, transportation, administration and services (if any), specified in this Purchase Order (including any part of the specified services and any ancillary services).

"Site" means the place described in this Purchase Order as the place for the use or storage of the Goods by the City or for the performance of the Services.

"Supplier" means the party or parties to whom the Purchase Order is issued.

"Taxes" means any and all taxes, levies, imposts, duties, Customs Duties, stamp duties, fees, withholdings, assessments, deductions or charges whatsoever, imposed, assessed, levied or collected by any governmental authority, together with interest, fines and penalties including occupational, excise, unemployment, ownership, sales, gross receipts, income taxes, payroll taxes, employer contributions (both statutory and otherwise) and workers' compensation payments and contributions but does not include value-added tax.

"Warranty Period" means the period of 24 months from the date of delivery and acceptance of the Goods and/or 24 months from the earlier of the date on which the Services are completed or the termination of the Purchase Order.

"Work IP" means all intellectual property (present or future) created, discovered or coming into existence as a result of,

for the purpose of, or in connection with the performance of the supply under this Purchase Order.

2.0 SUPPLY OF GOODS AND/OR SERVICES

2.1 In consideration of payment of the Price by the City, the Supplier shall supply the Goods and/or provide the Services to the City in accordance with, and as specified in, the Purchase Order.

2.2 To the extent the Supplier's terms and conditions are supplied to the City in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Contract Documents (even if any representative of the City signs those terms and conditions or annexes the terms and conditions to this Purchase Order) unless the City expressly agrees in writing to be bound by all or any of the terms and conditions.

2.3 Where this Purchase Order relates to Goods and/or Services that are the subject of a separate written agreement between the Supplier and the City, the terms of that agreement apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.

2.4 The Supplier must, in supplying the Goods or performing the Services:

- (a) not interfere with the City's activities or the activities of any other person at the Delivery Point or the Site;
- (b) be aware of and comply with, and ensure that the Supplier's Personnel are aware of and comply with:
 - (i) all applicable laws;
 - (ii) all City policies, to the extent applicable to the supply of the Goods or the performance of the Services by the Supplier; and
 - (iii) all lawful directions and orders given by the City's representative or any person authorised by law or the City's policies to give directions to the Supplier;
- (c) ensure that the Supplier's Personnel entering the Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site;
- (d) on request by the City, provide to the City and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by law in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Purchase Order.

3.0 DELIVERY

3.1 The Supplier shall supply the Goods and/or perform the Services to the Delivery Point by the Delivery Date. If no Delivery Date is specified, the Supplier shall supply the Goods and/or complete the Services within a reasonable time after the Supplier receives the Purchase Order. Time is of the essence of the Supplier's performance of the Purchase Order.

3.2 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage and in compliance with any applicable laws.

3.3 Packages must be marked with the Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight of each package.

4.0 TITLE AND RISK

4.1 Risk of loss of the Goods remains with the Supplier and title will not pass to the City until the Goods are delivered to and accepted by the City at the Delivery Point.

5.0 DEFECTIVE GOODS & SERVICES

5.1 All Goods and/or Services shall be received subject to the City's inspection and approval.

5.2 If the City determines that any Goods provided by the Supplier, even if the City has already accepted them, do not comply with the City's specifications or are defective, then the City may:

- a) Accept the Goods and adjust the price in accordance with their diminished value, as determined by the City;
- b) Reject the Goods outright, return them (or require the Supplier to retrieve or undo them) at the Supplier's expense, and require the Supplier to replace them; or
- c) Reject the Goods outright, return them (or require the Supplier to retrieve or undo them) at the Supplier's expense, and terminate this agreement.

5.3 In any case when the City requires replacement of Goods, the Supplier shall replace them immediately and at no additional cost.

5.4 In any case when the City rejects Goods, it shall not be responsible for any re-stocking charge.

5.5 The Supplier shall promptly correct defective work that has been rejected by the City as failing to conform to the Contract Documents.

5.6 Upon the City's request, the Supplier shall re-perform, at the Supplier's expense, any portion of the Services which are defective until such non-compliance is corrected.

5.7 All or part of any payment under an invoice or any holdback may be withheld by the City or set-off against the payments owing to the Supplier until the Supplier has remedied any defects to the City's satisfaction and at the Supplier's sole expense.

6.0 PRICE

6.1 The Supplier shall supply the Goods and/or Services for the Price specified in the Purchase Order.

6.2 The Price is inclusive of:

- (a) all charges for packaging, packing, insurance and delivery of the Goods and/or Services in accordance with this Purchase Order;
- (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services; and
- (c) the Supplier's compliance with its obligations under this Purchase Order; and
- (d) other than Goods and Services Tax (GST)/Harmonized Sales Tax (HST), Quebec Sales Tax (QST) or provincial sales tax imposed by the laws of a Canadian province (PST) applicable, the Contract Price is inclusive of all Taxes for which the Supplier is responsible under applicable laws.

7.0 INVOICING AND PAYMENT

7.1 The Supplier may charge the City, for the provision of the Goods and Services, amounts not greater than the Price. Any increase in the Price due a change in the scope of the work must be approved in writing by the City.

7.2 The City will pay the Supplier the properly charged amounts for the Goods and/or Services, less any holdbacks required under the Contract Documents or the applicable lien legislation, within 30 days after approval by the City of the invoice and applicable backup information.

7.3 Unless specified otherwise on the Purchase Order, the Supplier will invoice the City for supplied Goods and/or Services within 30 days after supply of such Goods and/or Services.

7.4 Payment of an invoice is not evidence or an admission that the Goods or Services meet the requirements of the Purchase Order.

7.5 Any Invoice must include the following details:

- (a) a reference to this Purchase Order and the relevant written agreement (if any) including the line item numbers on this Purchase Order and the contract number;
- (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
- (c) the Price relating to the Goods and/or Services, broken down to reflect the same Price components as on this Purchase Order, including the amount applicable to HST, GST, QST or PST;
- (d) for all Goods provided and/or Services performed on a costs reimbursable or unit price basis, daily time sheets, which shall detail all hours worked, materials installed and equipment used, for approval by the City. An approved copy of such time sheets shall be submitted in support of the Supplier's Invoices; and
- (e) the City department, Site and the City contact name.
- (f) the supplier shall send the original invoice, bill of lading, or other sufficient shipping memorandum, to the City,
Attention Accounts Payable
1 Carden Street
Guelph ON N1H 3A1

7.6 The City may reduce any payment due to the Supplier under this Purchase Order by any amount which the Supplier must pay the City, including costs, charges, damages and expenses and any debts owed by the Supplier to the City on any account whatsoever. This does not limit the City's right to recover those amounts in other ways.

7.7 If the Purchase Order requires the Supplier to provide Services, and if the Supplier is a foreign corporation or company or a non-resident alien individual, then, unless Supplier provides the City with valid documentation (received prior to payment for Services) showing that an exemption applies where the Services are performed the City reserves the right to withhold payment of amounts required to satisfy

tax withholding obligations under applicable laws on account of the Services.

7.8 Unless specified otherwise on the Purchase Order or in any attachments thereto, the Price is inclusive of, and Supplier shall be solely responsible for and pay, all costs of delivering the Goods to the Delivery Point, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports or exports of the Goods ("**Customs Duties**"). The Supplier will take all reasonable steps to minimize Customs Duties costs.

7.9 The City shall not be subject to interest charges in the event it fails to make payments as they become due under the terms and conditions of the P.O.

7.10 On shipments originating outside of Canada, the supplier must furnish, in addition to its invoice, properly certified Canadian Customs invoices and NAFTA certificates in quadruplicate, made up in accordance with the Canadian Customs requirements. The seller is responsible for all customs and duty charges.

8.0 CONDITIONS AS TO QUALITY OF THE GOODS AND THE SERVICES

8.1 With respect to the Services, the Supplier warrants that:

- (a) the Services will be performed in a skillful and workmanlike manner, which is consistent with the level of expertise, care, skill and diligence demonstrated by experienced and reputable service providers performing services of a similar nature;
- (b) the Supplier shall always act diligently in the performance of the Services under this Purchase Order and shall comply with all laws applicable to the Services and with all aspects of this Purchase Order; and
- (c) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in this Purchase Order.

8.2 With respect to the Goods, the Supplier warrants that:

- (a) the Goods match the description in this Purchase Order;
- (b) if the Supplier gave the City a sample of the Goods before the City issued this Purchase Order, the Goods correspond with the sample;
- (c) the Supplier has good title to the Goods and the right to transfer title to the Goods free and clear of any encumbrances (including liens);
- (d) the Goods will: (i) be of good quality and workmanship and only incorporate new material; (ii) conform to any specifications and/or standards provided by the Supplier and approved by the City; (iii) will comply with all applicable local, provincial and federal laws and regulations; (iv) be free from defects in design, materials and workmanship; and (v) be fit for the intended purpose; and
- (e) the City has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Supplier must pursue any manufacturer's warranties on the City's behalf if the City so requests).

8.3 The Supplier further warrants that the Goods and Services and their use, manufacture, sale, lease, distribution, or other commercialization do not and will not infringe,

misappropriate or violate the Intellectual Property Rights of a third party. The Supplier shall be liable for and fully indemnify and hold harmless the City against any liability, whether direct or indirect, arising out of a claim by any third party against the City alleging that the Goods and Services and their use by the City, infringes any Intellectual Property Rights.

9.0 ACCEPTANCE AND CHANGE OF A PURCHASE ORDER

The Supplier may request changes to this Purchase Order, by written notice to the City contact specified in this Purchase Order, in response to which the City may issue an amended Purchase Order, in its sole discretion. If the City is unwilling to accept the requested changes, the City may terminate this Purchase Order.

10.0 TERMINATING THIS PURCHASE ORDER

10.1 The City may terminate this Purchase Order for any reason upon written notice to the Supplier, and:

(a) subject to Article 7.0, the City must pay for any part of the Goods delivered or Services performed prior to the termination;

(b) if the Supplier has shipped any Goods before the termination but the Goods have not been delivered to the Delivery Point at the date of termination, the City may either:
(i) subject to Article 7, accept those Goods when delivered, and pay the Price for them; or
(ii) return the Goods to the Supplier at the City's expense;

(c) if the Supplier has not shipped the Goods at the time of termination, on receiving the written notice of termination the Supplier shall stop manufacture of the Goods in accordance with and to the extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and

(d) if Sections 10.1(b)(ii) or 10.1(c) applies:
(i) to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Supplier for the City, the City will reimburse the Supplier in respect of any expenditure reasonably incurred by the Supplier prior to the date of the termination which is directly attributable to the placing of the Purchase Order and which the Supplier is not able to recover in some other way; and
(ii) the Supplier is not entitled to the Price of those Goods or Services, or to any compensation, including for lost profit, for that termination other than as specified in this Article 10.

11. CONFIDENTIAL INFORMATION

11.1 The Supplier must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Goods, Services, this Purchase Order or the City's Confidential Information without the prior written approval of the City.

11.2 The Supplier must not, and must ensure that the Supplier's Personnel do not, without the prior written approval of the City:
(a) use Confidential Information other than as necessary for the purposes of fulfilling the Supplier's obligations under this Purchase Order; or

(b) disclose the Confidential Information, other than to the Supplier's Personnel who need the information to enable the Supplier to perform this Purchase Order, to the Supplier's legal advisors, accountants or auditors, or where disclosure

is required by law (including disclosure to any stock exchange).

11.3 The Supplier must, within 10 Business Days (or any other period agreed in writing by the City) after a direction by the City to do so, return or destroy all Confidential Information in the Supplier's possession, custody or control.

11.4 If the City or the Supplier is required by law to disclose Confidential Information, it shall promptly notify the other party so that that party may intervene to prevent the disclosure.

11.5 The Supplier specifically acknowledges that the City is subject to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M. 56, and that the City may be compelled by law to disclose certain Confidential Information.

11.6 The rights and obligations under this Article 11 continue after the termination of this Purchase Order.

12.0 PRIVACY

Where the Supplier collects, uses or discloses or similar operation of the Personal Information in connection with this Purchase Order, the Supplier will:

(a) comply with all applicable privacy laws; and
(b) take all appropriate technical and organisational measures against unauthorised or unlawful collection, use and disclosure of Personal Information and against accidental loss or destruction of, or damage to, Personal Information.

13.0 INTELLECTUAL PROPERTY

13.1 Subject to the Terms and Conditions of this Article 13, a party's Background IP remains vested in that party.

13.2 The Supplier grants the City a non-exclusive, perpetual, royalty-free, irrevocable, transferable licence (with the right to assign and sub-license) to use the Supplier's Background IP to the extent necessary to use the Goods and/or Services, and assigns to the City all Work IP upon the creation of that Work IP.

13.3 The City grants the Supplier a non-exclusive, royalty-free, revocable, non-transferable licence to use the Work IP and the City's Background IP to the extent required to perform the Supplier's obligations under this Purchase Order.

14.0 DEFECTS

14.1 If, during the Warranty Period or within 30 days after expiration of the Warranty Period, the City finds any Defective Goods or Services, the City may:
(a) reject the Goods with the Defect and return them to the Supplier, in which case the Supplier must replace the Goods free of charge and reimburse the City for any expenses incurred;

(b) reject the Services with the Defect, in which case the Supplier must re-perform the Services free of charge; or

(c) make good or engage another supplier to make good the Defect, in which case the Supplier must reimburse the City for any expenses incurred.

14.2 If the Supplier does not replace the Goods pursuant to Section 14.1(a) or re-perform the Services pursuant to Section 14.1(b) and:

(a) the City has already paid the Supplier for the Goods or Services with the Defect, the Supplier must repay the City the Price for those Goods or Services; or

(b) the City has not already paid the Supplier for the Goods or Services with the Defect, the City is not liable to pay the Supplier for those Goods or Services.

14.3 The acceptance of any Goods or Services with a Defect by the City will not bind the City to accept any other Goods or Services with a Defect and does not affect any of the City's other rights under this Purchase Order or at Law.

14.4 Where the Supplier has made good any Defect under this clause, those Goods or Services will be subject to an additional warranty period of 24 months, from the date the Supplier made good the Defect.

15.0 WAIVER AND RELEASE OF LIENS.

Upon receipt from the City of amounts invoiced pursuant to Article 7.0 hereof, Supplier waives and releases all rights to, and at its sole cost shall obtain the prompt removal of, any mechanics', materialmen's, construction or any similar lien, encumbrance or claim fixed against the City or its assets, which then exist or which may thereafter arise for Goods furnished or Services performed. All payments owed to Supplier hereunder shall be contingent upon Supplier providing proof of its compliance with this provision to the City upon request.

16.0 LIABILITY AND INDEMNIFICATION.

16.1 To the extent permitted by law, the City's liability to the Supplier arising out of or in connection with this Purchase Order is limited to the total Price paid or payable by the City under this Purchase Order.

16.2 The Supplier agrees to indemnify and hold harmless the City and its Personnel from and against any and all liability that the City or its Personnel may suffer, sustain or incur, and any claim against the City or its Personnel (including legal fees incurred in defending any claim on a full indemnity basis), arising as a result of, in respect of, or arising out of Supplier's performance, non-performance or breach of the Purchase Order, except to the extent caused by the negligence of the City or its Personnel; provided however, the Supplier shall not be relieved of any pro rata, proportional, contributory or other allocation of liability or fault imposed by applicable laws. For the purpose of making the Supplier's promise to indemnify the City's Personnel enforceable, the parties acknowledge that the City is acting as the agent and trustee for its Personnel.

17.0 INSURANCE

17.1 Without limiting Supplier's obligations or liabilities hereunder, and subject to any requirements contained in the Request for Tenders or Request for Proposals, Supplier shall, at its sole expense, purchase and maintain the following insurance:

(a) commercial general liability insurance covering all liabilities for personal injury and property damage arising from the Services/Goods, with limits of liability of \$5,000,000 for each occurrence;

(b) if the Supplier will use or provide for use motor vehicles in providing the Goods and/or performing the Services, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use

of such vehicles, with limits of liability of \$2,000,000 for each occurrence and in the aggregate; and

(c) if the Supplier will provide professional advice or services, professional liability insurance, with limits of liability of \$2,000,000 for each claim and in the aggregate.

17.2 The Supplier shall ensure that all the foregoing insurance is primary and does not call into contribution any other insurance coverage available to the City.

17.3 The Supplier shall on request provide to the City or its designee certificates of insurance and endorsements as evidence of the insurance required under the Purchase Order.

18.0 WSIB

If, at the time the Services commence, the Supplier is subject to the insurance requirements under the WSIA, the Supplier shall comply with its obligations under the WSIA and shall provide a certificate under the WSIA confirming compliance if requested by the City.

19.0 GOVERNING LAW

19.1 This Purchase Order and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) will be governed by, construed and take effect in accordance with the laws in force in the Province of Ontario and the laws of Canada applicable therein.

19.2 The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to this Purchase Order.

20.0 DISPUTE RESOLUTION

20.1 All unresolved claims, disputes or controversies of any kind arising out of or in connection with this Purchase Order, ("Disputes") shall be resolved in a tiered approach as follows:

20.1.1 Disputes shall be referred to the Purchasing Manager of the City and an employee of the Supplier of the equivalent seniority or position for resolution within a period not to exceed thirty (30) days, as may be amended by mutual agreement;

20.1.2 if unresolved, under 20.1.1 above, the Disputes shall be referred to the Deputy Chief Administrative Officer of the City and the President of the Supplier for resolution within a period of not to exceed thirty (30) days, as may be amended by mutual agreement;

20.1.3 if unresolved under 20.1.2 above, and only at the election of the City, the Disputes shall be referred to the Chief Administrative Officer of the City and the most senior executive employee of the Supplier for resolution within a period of not to exceed thirty (30) days, as may be amended by mutual agreement. If the City does not elect, at its sole option, to proceed under this section 20.1.3, the Dispute shall proceed to 20.1.4;

20.1.4 if the Disputes remain unresolved despite the parties attempting to resolve them following the process in sections 20.1.1, 20.1.2 (or 20.1.3 where the City has elected to proceed) above, a party may elect to proceed with the Disputes under a mediation model to be agreed upon by

the parties. A party shall elect to proceed to mediation no later than ten (10) days following the expiry of the timeline set out in section 20.1.2 above, as may be amended by mutual agreement. If a party elects to proceed with mediation, the other party shall be bound to proceed to mediation. No later than 10 days (or as may be amended by mutual agreement) after a party makes an election to proceed to mediation, the parties shall enter into a mediation agreement which shall set out the mediation process.

- 20.1.5 If neither party elects to proceed to mediation within the timelines outlined in 20.1.4 above or the parties are unable to enter into a mediation agreement by the timeline set forth in 20.1.4 above (as those times may be amended by the parties upon mutual consent), the matter shall proceed and be finally resolved by binding arbitration in accordance with the *Arbitration Act*, 1991, S.O. 1991, c. 17 (the "Act") by a single arbitrator as amended by an arbitration agreement to be executed by the parties and the arbitrator. The Parties shall mutually agree on the selection of the arbitrator, failing which the arbitrator shall be appointed in accordance with the Act. The arbitration proceedings shall take place in Guelph, Ontario, Canada. The language of the arbitration shall be English. The Parties agree that any arbitration award, including with respect to costs, shall be binding on the Parties, may be enforced in any court of competent jurisdiction and shall be final and no appeals or judicial reviews shall be permitted as of right or by application to any court of competent jurisdiction, except on errors of law. The Parties shall each bear their own costs and their proportionate share of any joint costs of arbitration, subject to any award of an arbitrator.
- 20.1.6 Concurrently with resolving the Dispute in accordance with section 20.1.1 above, and prior to the expiry of the timeline outlined in section 20.1.1 above, the parties shall agree on a mediator to hear the Dispute in the event that either party elects to proceed with a mediation of the Dispute in accordance with section 20.1.4 above, provided, however, that in no circumstance shall the selection of a mediator be deemed to be an election to proceed to mediation. A party must comply with section 20.1.4 above in order to proceed to mediation. If a mediator is not selected prior to the expiry of the timeline outlined in section 20.1.1 above, unless the parties agree otherwise, no party shall be entitled to elect to proceed to mediation under section 20.1.4 above and the Disputes shall be referred to binding arbitration.

21. MISCELLANEOUS.

21.1 The Supplier shall not assign, delegate or subcontract the Purchase Order or any interest herein, including any performance or any amount that may be due hereunder, without the City's prior written consent.

21.2 The Purchase Order, including any attachments noted in the Purchase Order, constitutes the entire agreement relating to the subject matter hereof and supersedes all prior and contemporaneous understandings or statements unless expressly contained herein.

21.3 If there is any conflict between these Terms and Conditions and a provision elsewhere in the Purchase Order (including attachments to the Purchase Order), these Terms and Conditions will prevail.

21.4 No modification or alteration of the terms hereof shall be binding unless such modification or alteration is in writing and signed by both the City and the Supplier.

21.5 Either party's waiver of any breach, or failure to enforce any of the Terms and Conditions hereof, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof.