



**GENERAL TERMS AND CONDITIONS
FOR REQUEST FOR QUOTATION / PURCHASE ORDERS**

1. General. The terms of the contract (the “**Contract**”) between the Municipality and Contractor are comprised of the Municipality’s purchase order or request for quotation, including all documents incorporated by reference therein and includes the Contractor’s proposal/quote to the extent there are no conflicts with the Municipality’s purchase order, RFQ and these terms. Notwithstanding the Municipality’s act of accepting a quote or paying for Goods or Services (which includes all resulting deliverables), all terms and conditions which are contained in any other document submitted by Contractor whether as part of the Contractor’s proposal or otherwise, such as an order acknowledgement, invoice, standard or online terms or other such document, are hereby expressly rejected and superseded by the Contract regardless of the content of such other document. Failure by the Municipality to object to any conflicting provision in Contractor’s documents is not a deemed acceptance of such provision, or a waiver of the provisions of the Contract. In the event of any conflict or inconsistency among these General Terms and Conditions and any other term on other documents forming part of the Contract, these Terms and Conditions shall govern. **These General Terms and Conditions may only be excluded or amended by written agreement signed by a duly authorized representative of the Municipality explicitly referencing an intention to accept the conflicting terms.**

2. Personnel. Contractor shall provide the services of the persons named in the Contractor’s proposal (if any), together with any additional persons necessary to perform the work and provide the Services required under this Contract. Should Contractor, at any time, be unable to provide the services of the named persons or should at any time the required qualifications of named personnel be lost such that they no longer meet the required qualifications to provide the Services, Contractor shall be responsible for providing replacements with at least the same level of skill and experience and that meet the qualifications requirements. In such cases, Contractor shall notify the Municipality’s representative in writing and provide: (a) the reason for the removal of the named person from the project; (b) the name of the proposed replacement; and (c) an outline of the skills and experience of the proposed replacement. To the extent practicable, the notice will be sent at least 7 calendar days in advance of the date upon which the replacement is to commence work. Such replacements will be subject to the written approval of the Municipality. The Municipality may order the removal of any personnel (whether or not named in the proposal) on reasonable grounds including, without limitation, a violation of the Municipality’s applicable workplace policies and Contractor shall immediately remove the person from the work and shall secure a replacement.

3. Working on Municipality Property; Clean-up; Storage of Contractor Materials. Contractor shall comply with all Municipality policies applicable to parties working on Municipality property; shall be responsible for any damage to Municipality property or equipment caused by Contractor personnel (including subcontractor personnel); and shall be responsible for cleanup of Contractor’s worksite and the proper disposal of materials, including without limitation packaging or waste. Contractor shall in all cases obtain a pre-approval in writing from the duly appointed Municipality representative prior to storing any Contractor materials, including equipment or tools, on Municipality property. Storage of Contractor material on Municipality property is at the Contractor’s sole and exclusive risk. The Municipality is not responsible for any damage to, or loss of, Contractor’s material while stored on Municipality property.

4. Prices, Payment and Invoicing. Unless otherwise specified in the Contract, all prices are in Canadian dollars and are the maximum prices to be charged for the Goods and Services. Any maintenance services and unique parts and consumable items required in connection with Goods must be offered by Contractor at a price that is not higher than Contractor’s published prices at the time that the Contract is executed (where not published, then at commercially reasonable and competitive prices) and must not increase until completion of the project or, where the Contract is for a defined term, then for the term of the Contract. Where no Contract term is specified, then prices must not increase for at least the 12 month period following the effective date of the Contract. Thereafter, such prices must not increase more than the percentage increase in the Canadian Consumer Price Index in any 12 month period. Payment of invoices must be made within 30 calendar days from the later of (a) the Municipality’s receipt of a proper invoice or (b) acceptance of the Goods or Services in accordance with acceptance provisions set out below. Where applicable, a transportation bill of lading must be attached to each invoice. The Municipality may withhold from, reduce or set-off against any amount due to Contractor, such sums



as are reasonably necessary to cover non-performance, indemnity or liability of Contractor in relation to the Contract. **Invoices are to be submitted to ap@brockton.ca**, to the attention of Accounts Payable quoting the Contract number as set out in the Contract or the purchase order number as provided by the Municipality. Invoices must also include Contractor's GST or HST and applicable PST registration numbers. Unless otherwise agreed, Contractor must complete the Municipality forms and other measures, as required, to enable payment by electronic funds transfer. The Municipality is not liable for any Services performed or Goods delivered in excess of those required by the Contract unless expressly agreed in writing in advance.

5. Taxes. The prices set out in the Contract are exclusive of Canadian GST/HST and PST (if applicable) and inclusive of any other taxes, duties, fees (including brokerage fees) and levies that may be imposed on Contractor by Canadian law or a non-Canadian jurisdiction. Where any payments due under the Contract are subject to any Canadian legislated deduction, withholding or similar tax, the Municipality shall deduct or withhold the necessary amount unless Contractor provides proper documentation from a competent governmental authority relieving the Municipality of its withholding obligations prior to payment being made.

6. Time of the essence/Delivery Dates. Time is of the essence in the Contract. Contractor shall notify the Municipality as soon as it becomes aware that it cannot meet the agreed delivery dates for Goods or Services. In the event of a delay, Contractor shall, at no additional cost to the Municipality, employ accelerated measures such as premium transportation costs or labour overtime to ensure the Goods or Services are delivered on or before the revised delivery date. In the event a delay in delivery or a new delivery date proposed by Contractor is not acceptable to the Municipality, acting reasonably, in addition to any other rights and remedies that may be available to the Municipality at law, the Municipality may cancel the PO or Contract without any liability whatsoever.

7. Shipping. Where applicable, and unless otherwise specified herein, Contractor shall ship the Goods Delivery Duty Paid (DDP-Incoterms, 2018), to the place of destination specified by the Municipality in the Contract, using the most direct and economical means. A packing slip must accompany each shipment indicating the Contract number. Title to the Goods will pass to the Municipality upon acceptance by the Municipality as set out in these terms. In the event of loss or damage during shipping, Contractor shall be required to promptly ship replacement Goods, at Contractor's cost.

8. Inspection and acceptance. The Municipality shall have 30 business days following receipt to inspect and accept the Goods or Services. Where the Municipality discovers defective or non-conforming Goods or Services, the Municipality may at its option and without prejudice to any other rights or remedies it may have hereunder or at law: (a) at Contractor's expense, return Goods for a refund, credit, repair or replacement or (b) obtain a price reduction or re-performance of non-conforming Services. No payment shall be owed for the Goods or Services unless and until the Municipality has accepted the Good or Service.

9. Warranty. Contractor represents and warrants that any Services will be performed in a good and workmanlike manner and of a quality at least equal to that generally accepted in the industry for similar work; that the Goods are not subject to economic sanctions, will be new and of current production and that, for a period of one (1) year or such longer warranty period as may be specified in the Contract, following the Municipality's acceptance, the Goods will be merchantable, of satisfactory quality, free from defects in design, material and workmanship; and where applicable, will conform to and perform in accordance with specifications, drawings and samples accepted by the Municipality. Goods or Services failing to comply with applicable warranties will be, at the Municipality's option, (i) returned for a full refund or credit of amounts paid by the Municipality for the defective Goods, (ii) repaired, (iii) replaced; (iv) re-performed by Contractor using alternate personnel if instructed by the Municipality or (v) rejected by the Municipality, at no cost or expense to the Municipality and with any shipping and transportation costs and risk of loss and damage in transit borne by Contractor. Repaired and replaced Goods or re-performed Services shall be warranted as set forth in this Section. The above warranties, together with any additional Contractor warranties, survive inspection, test, acceptance of and payment for the Goods or Services. Unless otherwise specified on the face of the Contract, if an additional warranty-related obligation (e.g. manufacturer's warranty) sets a warranty time period or warranty standard that is not consistent with a warranty time period or warranty standard set out in this Section, Contractor shall comply with the longest time period and highest standard.



10. Termination. The Municipality may, at any time upon written notice to Contractor, cancel, terminate, suspend performance of, or issue a hold on, (collectively “**Termination**”) any PO or the Contract, in whole or in part, for any reason including (a) for cause or (b) for the Municipality’s convenience. If the Municipality cancels or terminates a PO or the Contract for convenience, all work completed by Contractor to the satisfaction of the Municipality, and all authorized work in progress as of the termination date will be paid for by the Municipality in accordance with the provisions of the Contract. The Contractor will not be entitled to payment for work completed or authorized work in progress if the Municipality suspends performance of or issues a hold on a PO or the Contract unless and until the Municipality cancels or terminates the PO or Contract for its convenience. Upon a termination or cancellation for convenience, any work-in-progress shall be paid on the basis of Contractor’s costs incurred in the preparation of such work-in-progress to the date of termination on subject to Contractor providing reasonable evidence of such costs. The Municipality shall in no event be liable to pay a total amount exceeding the Contract value. The Municipality will have no further liability or obligation whatsoever to Contractor for any Termination. Any breach of the Contract by Contractor will entitle the Municipality to immediately cancel or terminate the Contract without liability to the Contractor whatsoever and without any prejudice to the other rights and remedies the Municipality may have. In the event of a Termination for cause, the Municipality shall have the right to appoint a third party to complete the Services or supply the remaining Goods and Contractor shall be liable for the additional costs incurred by the Municipality in connection with such re-procurement and for the completion of work.

10. Governing Law and Competent Court. The construction, interpretation and performance of the Contract are 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 Contracts for the International Sale of Goods. Any and all disputes between the Municipality and Contractor that ensue from the Contract will be submitted to a competent court of the Province of Ontario, without prejudice to the Municipality’s right to submit a dispute to the court that would be competent absent this clause.

11. Liability. Contractor shall indemnify and hold harmless the Municipality, its employees, the mayor, councilors, officers and agents (collectively “**Municipality and Personnel**”) from and against any and all claims, demands, damages, losses, costs and expenses, including legal fees (collectively, “**Claims and Costs**”) to the extent caused by Contractor, its officers employees, directors, officers, employees, subcontractors, suppliers and other representatives. Contractor shall have no obligation pursuant to this Section to the extent that the Claims and Costs arise from the negligence of any Municipality and Personnel. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Contractor in accordance with this Contract and shall survive termination or expiration of this Contract. Contractor shall not enter into any settlements admitting any Municipality and Personnel liability without the Municipality’s prior written consent. IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS, LOST PRODUCTION OR PROFITS, LOST OPPORTUNITY, EXPENSES OR DAMAGES INCLUDING WITHOUT LIMITATION LITIGATION COSTS ARISING FROM ANY CAUSE WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. IN NO EVENT SHALL THE MUNICIPALITY’S LIABILITY EXCEED (A) THE DOLLAR VALUE OF THE CONTRACT OR (B) WHERE NO DOLLAR VALUE MAY BE CALCULATED, THEN THE DOLLAR VALUE IS THE AMOUNT PAID (AND PAYABLE) BY THE MUNICIPALITY TO THE CONTRACTOR IN THE 12 MONTHS PRECEDING THE DATE OF THE INCIDENT FIRST GIVING RISE TO THE CLAIM.

12. Intellectual Property. In exchange for the consideration provided to Contractor hereunder, the Municipality will: (i) have free title to and all ownership interest in the Goods or Services (which, for greater certainty, includes deliverable) delivered except for pre-existing software provided that it is acknowledged that the Municipality is hereby granted a perpetual, paid-up, royalty free, irrevocable license to such software; (ii) own all intellectual property rights in any documents, software or other information developed for the Municipality and delivered hereunder. Contractor agrees to execute any assignment, conveyance or any other assurance necessary to give effect to this Section and shall ensure that the Municipality has supporting technical documentation and a license to any other materials delivered by Contractor hereunder sufficient to allow the Municipality to have the intended use of the materials.



13. Municipality Property, Confidentiality, Privacy and Publicity. All specifications, drawings, patterns, samples and other information furnished to Contractor in connection with the Contract will be used solely for the purpose of carrying out the work and for no other purpose; will remain the property of the Municipality; and be returned or destroyed at the Municipality's request at the expense of Contractor. This Contract and information issued, used or disclosed in connection with the work are confidential and may be classified as to the degree of precaution necessary for their safeguarding. Contractor shall at all times take all measures reasonably necessary, including those set out in any instructions issued by the Municipality, for the protection of same. Contractor shall not use the Municipality's name in any public statement or publicize the fact the parties are doing business, without the prior written consent of the Municipality. Contractor agrees that all personal and security sensitive information disclosed by the Municipality, or managed, accessed, collected, used, retained, created or disposed of in order to fulfill the requirements of the Contract will at all times be stored on segregated, stand-alone information systems in Canada.

14. Contractor Records. Contractor shall keep proper accounts and records of costs and expenditures in connection with the Contract including paid invoices for a period of seven (7) years following the expiration or termination of the Contract and shall make them available to the Municipality upon request, for audit and inspection at any time. Where such audit or inspection discloses an overpayment by the Municipality, the Municipality shall have a right to set-off the amount of such overpayment against future Contractor invoices issued pursuant to this or any other Contract and, to the extent that the Municipality's right of set-off is not exercised or not adequate to cover such overpayment, Contractor shall be responsible for repaying such overpayment.

15. Freedom of Information and Privacy Legislation. Proponents to be aware that all information distributed and collected with respect to the procurement process is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, RSO, 1990 or any other applicable information or privacy legislation.

16. Miscellaneous. Contractor is an independent contractor and not an agent or employee of the Municipality. Contractor shall at all times comply with applicable laws. Nothing in this Contract grants Contractor the right to exclusively provide the Goods or Services. The Municipality shall at any time have the right to engage alternate or supplemental parties to perform the same or similar Services or provide the Goods at any time. Any delay by the Municipality in the exercise of any right or remedy provided herein shall in no event be deemed to be a waiver of such right or remedy. To be valid, any waiver by the Municipality must be made in writing expressly referencing the Contract. A valid waiver of any right or remedy herein will in no event be deemed to (i) constitute a waiver of such right or remedy arising in the future or (ii) operate as a waiver of any other right or remedy. 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 Municipality may assign its rights and obligations under the Contract without requiring any notice to or consent from Contractor. Contractor may not assign or transfer any right or obligations hereunder without the prior written consent of the Municipality. Contractor shall be liable for of its subcontractors' compliance with the Contract. A copy or electronic version of this document will have the same force and effect as the original document. Les parties ont accepté que ce document soit rédigé en anglais. The parties have agreed that this document be prepared in the English language.