

## **PURCHASE ORDER TERMS & CONDITIONS**

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These Terms and Conditions are intended to cover a wide range of procurements, including goods and services. As such, not all clauses will be applicable in all situations. If suppliers have questions regarding any of these Terms and Conditions, they should contact the person soliciting the services/goods. To satisfy special requirements, supplementary Terms and Conditions may also apply to some acquisitions. If this is the case, the Solicitation documents will reference any such documents, in addition to these Terms and Conditions.

### **1. *Terms and Price***

- 1.1. These terms and conditions form part of every Purchase Order (“P.O.”) issued by the Greater Moncton Wastewater Commission (Commission). No variation of the P.O., including these terms and conditions, is authorized unless such variation has been approved by the Greater Moncton Wastewater Commission, in writing.
- 1.2. If reference to a Request for Proposal (“RFP”), Request for Tender (“RFT”), Request for Quotation (“RFQ”), Informal Request for Quotation (“IRFQ”) or Request for Information (“RFI”) is made on the face of the P.O., then the terms and conditions of that RFP, RFT, RFQ, IRFQ or RFI take precedence over these terms and conditions in the case of a conflict.
- 1.3. The purchase price indicated on the face of the P.O. is the final, unconditional price.

### **2. *Insurance and Indemnification***

The supplier shall provide and maintain during the term of the Supply Contract Commercial General Liability insurance acceptable to the Commission and subject to limits of not less than \$2,000,000.00 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. The Commercial General Liability insurance policy shall be in the name of the supplier and shall name the Greater Moncton Wastewater Commission, as an additional insured.

### **3. *Occupational Health and Safety Act N.B.***

The supplier shall fulfill all of its obligations in compliance with the Occupational Health and Safety Act, and further agrees to take responsibility for any health and safety violation that may occur. Furthermore, if the commission (or any of its board members or employees) shall be made a party to any charge under the Occupational Health and Safety Act in relation to any violation of the said Act arising out of the contract, the Supplier shall indemnify and save harmless the Commission from any and all charges, fines, penalties, and costs that may be incurred or paid by the Commission.

All suppliers are required to provide a current Letter of Good Standing (LoGS) from WorkSafe NB.

### **4. *Deviation***

The supplier shall not make any deviations from the drawing or specifications, terms, or conditions of this Purchase Order in its fulfillment of the Contract unless prior written permission from the Commission has been provided. Unauthorized deviations shall be corrected at the supplier’s expense.

**5. *Compliance with Applicable Law***

The Supplier shall comply with all federal, provincial and local laws and regulations applicable to the transportation, and off-loading of the product.

**6. *Assignment***

The Contract and the right to receive payment hereunder shall not be assigned, in whole or in part, by the supplier without the prior consent in writing of the Commission and any purported assignment made without that consent is void and of no effect.

No assignment of the Contract shall relieve the Supplier from its obligations under the Contract or impose any liability upon the Commission, unless otherwise agreed to in writing by the Commission.

**7. *Time of the Essence***

The supplier is to perform the required work within the time frame specified in the Request for Quotation and Contract and any extensions that have been approved by the Commission in writing. Should the supplier fail to perform in accordance with the schedule, the Commission reserves the right to withhold payment and assign remaining work to an alternate supplier. The supplier shall pay the difference in price arising from another supplier completing the contract.

**8. *Default by the Supplier***

Where the Supplier is in default in carrying out any of its obligations under the Contract, the Commission may, upon giving written notice to the supplier, terminate for default the whole or any part of the Contract, either immediately, or at the expiration of a cure period specified in the notice if the supplier has not corrected the deficiency to the satisfaction of the Commission within the time frame specified.

Upon the giving of notice and termination as provided for in the section above and upon the completion of the contract by another supplier, the supplier will be entitled to payment for product supplied or worked on less any added costs added by the supplier completing the contract, provided they have been accepted by the Commission.

**9. *Indemnification***

The supplier shall be responsible for, and shall save harmless and indemnify the Commission from and against all loss, costs, damages, suits, claims and demands of every nature whatsoever arising out of or by reason of the performance or purported performance of the contract by the supplier including, without limitation, those made or sustained in respect of property damage, personal injury (including death) and infringement of copyright, trademark, patent of invention, violation of provincial or federal regulation, or municipal by-law.

**10. *Payment***

Payment by the Commission for the product supplied shall be made following delivery, inspection and acceptance of the material/services/work and following the presentation of an invoice which correctly corresponds with the material/services/work provided.

Terms of payment shall be net 30 days from the date of receipt of the invoice or net 30 days from receipt of goods or completion of work as determined by the Commission whichever is later.

## 11. *Invoices*

The following information must be provided on the face of the invoice for processing of payment:

- 11.1. All prices should be extended and totaled. The extended price is derived by multiplying the unit price by the quantity of units required. H.S.T. must be separately reflected on invoice as should any shipping charges
- 11.2. The Commission will not accept any fuel surcharges on invoices.
- 11.3. Supplier's H.S.T. number
- 11.4. Date of invoice
- 11.5. Separate progress invoices must be rendered for each partial payment
  - 11.5.1. Must provide percent complete and value remaining for each P.O. line.
- 11.6. Purchaser's name and ship to address
- 11.7. Purchase Order Number
- 11.8. Invoices must be quoted in Canadian dollars unless other currencies are specifically requested.
- 11.9. Shipping, cartage, loading, insurance and handling charges must be included in the total price. If these charges have not been stated specifically, it will be assumed that they have been included in the Bid price, i.e., FOB to the destination(s) listed in the Solicitation. TransAqua will not assume responsibility for any goods or services until they have been delivered to the destination (s) specified in the Solicitation
- 11.10. Invoices will be emailed separately in pdf format with the following information:
  - 11.10.1. **PDF INVOICE LABEL**
  - 11.10.2. : Supplier Name-Invoice Number as seen on invoice  
**Ex: TransAqua – T123456**
  - 11.10.3. Invoices to be emailed to [ap@transaqua.ca](mailto:ap@transaqua.ca)

## 12. *Conflict of Interest*

All suppliers are required to disclose to the Commission prior to accepting the order any potential conflict of interest. If a conflict of interest does exist as referred to above, the commission may, at its discretion, withhold the assignment from the supplier until the matter is resolved to the satisfaction of the Commission.

## 13. *Fraud or Bribery*

Should the supplier, any of its agents give or offer any gratuity to, or attempt to bribe any member or employee, or to commit fraud against the Commission, the Commission shall be at liberty to declare the quotation or Contract void forthwith.

## 14. *Right to Information and Protection of Privacy Act of New Brunswick (the "Acts")*

The Greater Moncton Wastewater Commission is subject to the "Act" with respect to, and protection of, information under its custody and control. Accordingly, all documents provided to the Commission in response to the Request for Quotation may be available to the public unless the party submitting the information requests that it be treated as confidential.

**15. Confidential Data**

The successful supplier shall not at any time before, during or after the completion of the work divulge any confidential information acquired in the course of carrying out the work provided herein. No such information shall be used by the successful supplier before, during or after completion of work on this or any other project without prior written approval of the commission.

**16. Notice**

Any notice shall be in writing and may be delivered by hand or by courier, by registered mail, or by facsimile or other electronic means that provides a record of the text of the notice and time of delivery, addressed to the party for whom it is intended at the address in the Contract or at the last address of which the sender has received notice in accordance with this section.

**17. Entire Agreement**

The Contract constitutes the entire and sole agreement between the parties with respect to the subject matter of the Contract and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Contract. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in the Contract.

**18. Applicable Laws**

This Contract shall be interpreted and governed, and the relations between the Parties, determined by the laws in force in New Brunswick and the Courts of New Brunswick.

Suppliers agree to comply with all applicable laws, regulations and standards, including all labour, occupational health & safety, and worker compensation requirements of the Province.

**19. Force Majeure**

The parties hereto shall in no event be liable for any failure or delay in performance hereunder if such failure is due, in whole or in part, to any cause beyond the reasonable control of such party which shall be deemed to include, without limitation, fire, explosion, natural disaster, power failure, acts of God, military actions or acts of public enemies, any law, order, regulation, rule or requirement of any government or legal body, labour action (such as strikes, slowdowns, picketing or boycotts), damage to or destruction of transmission equipment or facilities, and no-availability of materials, utilities or services, (each, an event of "Force Majeure"); provided that in no event shall lack of money be an event of Force Majeure.

**20. Extensions of Hospitality**

By responding to this solicitation, suppliers acknowledge that Commission employees are governed by an Employee Code of Conduct which prohibits the acceptance of gifts, favours, hospitality or entertainment.

**21. Strikes, Accidents**

In the event of strikes, accidents or unforeseen contingencies causing stoppage of work, the Commission reserves the right to suspend service, manufacture and/or delivery. Due to the nature of the plant, it will be mandatory that suppliers be ready to cross the picket line in the event of a strike.

**22. Material Safety Data Sheets**

Material safety data sheets must be provided prior to receipt of goods, for any hazardous materials on this P.O.. If data sheets have not been received, goods may be returned to the supplier at its expense.

**23. Disputes**

This Contract shall be governed by the laws of the Province of New Brunswick. In the event that there shall be a dispute between the parties with respect to any matter or issue arising in connection with this Contract that cannot be resolved by agreement between the parties, the matter or issue in dispute may be referred by either party to be determined by arbitration pursuant to the provisions hereof by notice in writing to the other party. Upon the giving of such notice, the parties will mutually agree on one arbitrator. If they cannot agree on a single arbitrator, each of them will designate one arbitrator and the two arbitrators shall, within 15 days, designate a third arbitrator as chair, or failing such designation, either party may apply to a Judge of the Court of Queen's Bench of New Brunswick for the designation of such third arbitrator as chair. A majority of the three arbitrators shall determine the matter or issues in dispute, and their determination shall be final and binding upon the parties, and not subject to appeal. The arbitrators may in their discretion determine responsibility for the costs of arbitration of each party. Subject to the foregoing, the arbitration shall be made pursuant to the Arbitration Act (New Brunswick).

**24. Suppliers Located Outside of Canada**

- 24.1. If permitted in the Solicitation documents, a Bid is given in a currency other than Canadian dollars, the Supplier assumes the risk of variations in international exchange rates, and Supplier's prices must include all associated costs and overheads connected with foreign currency transactions.
- 24.2. The bidder must arrange for clearance of goods through the Canada Border Services Agency, along with all brokerage fees and payment of applicable Canadian taxes and duties. For information pertaining to the Canada Border Services Agency please visit <http://www.cbsa-asfc.gc.ca/>.
- 24.3. The Bidder must arrange all visas, insurance, work permits, passports, etc., for personnel required to visit Canada in association with the Bid.
- 24.4. All warranties on goods must be valid in Canada. To the extent that facilities are available, warranty service should be provided in Canada.

**25. Termination for Convenience**

Commission may at any time for convenience and by written notice, immediately terminate all or any part of this Contract. Upon written notice Supplier shall stop work immediately as to the terminated portion of this Contract and notify any subcontractor(s) to stop work, and protect and preserve property in its possession in which Commission has an interest. In the event this Contract is terminated, in whole or in part, for Commission's convenience, Supplier shall be paid an amount, to be mutually agreed upon, which

shall be adequate to cover the reasonable cost of Supplier's actual performance of work under this Contract to the effective date of termination, in addition to a commercially reasonable profit. No amount shall be paid to Supplier for any anticipatory profits related to work under this Contract not yet performed, or costs incurred due to Supplier's failure to terminate work as ordered on the effective date of termination. Commission shall have no obligation to make any of the aforementioned payments to Supplier, either for completed items or in connection with terminated work in process, unless Supplier shall establish to Commission's satisfaction that such completed items, or the work in process, including materials, are unusable in connection with Supplier's other business. In no event shall the termination charges and all previous payments made under this Contract exceed the total order value shown on the face of this Contract.

## 26. *Cancellation for Default*

- 26.1. The Commission may, by written notice to the supplier, immediately terminate all or part of this Contract if:
  - 26.1.1. The supplier fails to deliver the Goods within the time specified by this Contract or any written extension; or
  - 26.1.2. The supplier fails to perform any other provision of this Contract or fails to make progress, so as to endanger performance of this Contract, and, in either of these two circumstances, does not cure the failure within 10 days after receipt of notice from Commission specifying the failure; or
  - 26.1.3. In the event of the supplier's suspension of business, insolvency, appointment of a receiver for Supplier's property or business, or any assignment, reorganization or arrangement by the supplier for the benefit of its creditors.
- 26.2. In the event the Commission terminates this contract or any portion of in accordance with this Article 26, Supplier shall continue work not canceled. If the Commission cancels all or part of this Contract, Supplier shall be liable for the Commission's excess re-procurement costs.
- 26.3. The Commission may require the supplier to transfer title and deliver to the Commission, as directed by the Commission, any
  - 26.3.1. Goods,
  - 26.3.2. Partially completed Goods and materials, parts, tools, fixtures, plans, drawings, information and contract rights (collectively, "Materials") that Supplier has specifically produced or acquired for the canceled portion of this Contract. Upon direction from the Commission, the supplier shall also protect and preserve property in its possession in which the Commission has an interest.
- 26.4. The Commission shall pay the Contract price for Goods accepted. Payment for Materials accepted by the Commission and for the protection and preservation of property shall be at a price determined in accordance with the "Termination for Convenience" article of this Contract, except that the supplier shall not be entitled to profit. The Commission may withhold from any amount due under this Contract any sum the Commission determines to be necessary to protect the Commission or Commission's customer against loss because of outstanding liens or claims of former lien holders.
- 26.5. If, after cancellation, it is determined that the supplier was not in default, the rights and remedies of the parties shall be as if the Contract had been terminated according to the "Termination for Convenience" article 25 of this Contract.