

GENERAL TERMS AND CONDITIONS FOR GOODS PURCHASES

GENERAL

These General Terms and Conditions shall apply only to those solicitation documents that reference them specifically for Manitoba Infrastructure.

By submitting a Bid to Manitoba, Bidders agree to these General Terms and Conditions for Goods Purchases. Upon award of a Bid, the Bidder by default becomes the Vendor to which these General Terms and Conditions for Goods Purchases apply. A Purchase Order is a result of the combination of the Request For Quotation, the Bid, the General Terms and Conditions for Goods Purchases and the Special Terms and Conditions and subsequently awarded to the Vendor. Failure to comply with these Terms and Conditions could cause a Purchase Order to be cancelled.

In the event of any conflict or disagreement between these Terms and Conditions and the solicitation documents, the solicitation documents take precedence and will be assumed to be correct.

These General Terms and Conditions for Goods Purchases cover a wide range of provincial procurements for goods and services. As such, not all clauses will be applicable in all situations. If Vendors have questions regarding any of these General Terms and Conditions for Goods Purchases, they must contact the person named in the solicitation document.

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1.0 PURCHASE ORDER DEFINITIONS

AMMENDMENT: means any document issued by the owner for the purpose of correcting, clarifying or modifying any of the tender documents.

BID: means the Bidder's bid/quotation or offer submitted in response to the RFQ.

BIDDER: means the person who or company which obtains a copy of the RFQ for the purpose of submitting a bid/quotation or offer to provide the goods and/or services.

MANITOBA: means the Government of Manitoba or the purchaser for a department or branch of the Government of Manitoba that requires the goods and/or services listed in the RFQ or PO.

PURCHASE ORDER (PO): means the Purchase Order issued by Manitoba to the Vendor as written acceptance of their bid/quotation or offer to supply the goods and/or services. The General Terms and Conditions for Goods Purchases and the Special Terms and Conditions for Goods Purchases form part of the PO.

REQUEST FOR QUOTATION (RFQ): means the tender document to request pricing to provide the goods and/or services listed therein.

SPECIAL TERMS AND CONDITIONS: means the document governing the special requirements of the goods or services being purchased and which takes precedence over the Bidding Procedures and the General Terms and Conditions.

SOLICITATION DOCUMENT: means the set of bid documents made available at the time of bidding including all attachments, all amendments and any reference document.

VENDOR or SUPPLIER: means the person who or company which is awarded a PO to provide the goods and/or services listed in the RFQ.

2.0 TERMS

- 2.1 The General Terms and Conditions for Goods Purchases listed in the PO document shall apply except where Special Terms and Conditions are stipulated elsewhere in the PO. In that case, the Special Terms and Conditions shall take precedence over the General Terms and Conditions for Goods Purchases.
- 2.2 Failure to comply with the General Terms and Conditions for Goods Purchases or any other terms and conditions listed in the PO document may result in cancellation of the PO.
- 2.3 The words "must" "shall" and "will", mean a requirement is mandatory and must be met in order to fulfill the PO.

3.0 FEDERAL TAXES AND OTHER FEES

- 3.1 **GOODS AND SERVICES TAX (GST):** Manitoba is GST exempt. The GST Registration number for Manitoba is R107863847.
- 3.2 **EXCISE TAX:** Federal Excise Tax is payable as part of the unit price and will not be paid for as a separate item.
- 3.3 **DUTY:** Federal duty charges are payable on imported items as part of the unit price and will not be paid for as a separate item.

4.0 PROVINCIAL TAX

- 4.1 Manitoba is subject to the Manitoba Retail Sales Tax. This tax will not appear on the Purchase Order that is issued to the Vendor but applicable Retail Sales Tax must be shown as a separate item on the Vendor's invoices.

5.0 ERRORS AND OMISSIONS

- 5.1 Vendors must advise Manitoba of any errors or omissions found in the PO as soon as possible.

6.0 SPECIFICATIONS/QUALITY

- 6.1 It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding on the Vendor.
- 6.2 Unless specifically requested all goods must be new (unused), of the most current production and proven technology and of merchantable quality.
- 6.3 Goods subject to shelf life and obsolescence contingencies must be marked with expiry dates and supplied sufficiently in advance of the expiry date to permit reasonable use or consumption by Manitoba.

- 6.4 All components of the goods must be compatible and meet or exceed the PO requirements and the manufacturer's published specifications.
- 6.5 Deviations from the PO requirements may result in cancellation of the Purchase Order. Products not previously purchased may be subject to testing and approval.

7.0 PRODUCT CERTIFICATION

- 7.1 All products supplied to Manitoba, which require testing and approval by organizations such as Canadian Standards Association (CSA), Manitoba Department of Labour, or other testing agencies acceptable to Manitoba, must be tested and certified prior to delivery. Evidence of certification may be requested by Manitoba.

8.0 MATERIAL SAFETY DATA SHEETS (MSDS)

- 8.1 The successful Vendor shall provide Manitoba with one (1) copy of the Material Safety Data Sheets (MSDS's) for each product being supplied and throughout the term of the Purchase Order provide any revisions or updates as soon as may be reasonably possible.

9.0 WARRANTY

- 9.1 The Vendor shall ensure that Manitoba receives the manufacturer's warranty for the goods purchased.
- 9.2 Notwithstanding any manufacturers' warranties (which are to be supplied where applicable), all goods must be warranted to be free of defects in workmanship and materials for a suitable period of time consistent with the nature of the goods.
- 9.3 Notwithstanding the details in the PO, if a defect is not corrected during the Warranty Period and within a reasonable time frame, Manitoba may reject the goods. If the goods are rejected the Vendor must:
 - a) remove the goods, at its expense and risk within a reasonable time frame after notification that the goods have been rejected
 - b) immediately, at Manitoba's option, either replace the goods, or if applicable issue a credit or refund to Manitoba for all monies paid.

10.0 PURCHASER PROPERTY

- 10.1 Any and all property of Manitoba including but not restricted to, any document, drawing, etc. issued by Manitoba, shall remain the express property of Manitoba, and may not be destroyed, disposed of, reproduced or modified without the permission of Manitoba.

11.0 DELIVERY

- 11.1 The Vendor must comply with the delivery schedule on the PO.
- 11.2 The Vendor must advise Manitoba if for any reason a supply is short shipped or delayed and must also advise as to the expected delivery date.
- 11.3 The Vendor must not ship the goods by collect shipments for payment upon receipt by Manitoba, or at Manitoba's risk unless stipulated in the PO document.
- 11.4 Vendors outside of Canada must prepare appropriate documentation required by the Government of Canada. Payment is conditional upon receipt of a valid certificate of origin prior to delivery. The supplier shall indemnify Manitoba against all costs and duty arising from misrepresentation or false declaration in the certificate of origin.
- 11.5 The Customs Broker for the Manitoba Government is:

Thompson, Ahern & Co Limited
6299 Airport Road, Suite 506
Mississauga, ON L4V 1N3
Phone: 905-677-3471
Long Distance toll free phone: 1-866-778-4460
Long Distance toll free fax: 1-877-262-8226
Email: manitobagov@taco.ca

- 11.6 If complete delivery of the goods is not made within the time period indicated, Manitoba may:
 - a) extend the delivery period;
 - b) demand compensation;
 - c) accept partial shipment;
 - d) purchase the goods elsewhere and charge the Vendor with any loss incurred; and/or
 - e) cancel the PO.

12.0 TIME IS OF THE ESSENCE

12.1 Time is of the essence in the performance of the obligations under the PO. The Vendor acknowledges that Manitoba may return part or all of any shipment of goods received outside the delivery date and charge the Vendor with any loss or expense sustained as a result of the Vendor's failure to deliver as agreed. Without prejudice to the foregoing, if any circumstances arise which may delay the delivery of the goods, the Vendor shall immediately notify Manitoba of the circumstances and propose a revised delivery date which Manitoba may elect to agree or not agree to at its own discretion.

13.0 ACCEPTANCE/INSPECTION OF GOODS

- 13.1 The signing of any delivery slip should not be construed as acceptance of the product delivered.
- 13.2 The final inspection and acceptance or rejection will be made at the delivery destination unless otherwise stated in the Special Terms and Conditions for Goods Purchases. A visual inspection and/or test of the goods supplied will be conducted to determine if they are in accordance with the PO. This will be completed as promptly as practicable after receipt of goods. Unless Manitoba notifies the Vendor that the goods are not in accordance with the PO, the goods will be deemed accepted.
- 13.3 All goods, materials and workmanship shall be subject to inspection and testing at all times and places, and when practicable, during manufacture. The right is reserved by Manitoba to reject articles which contain defective material and workmanship.
- 13.4 If Manitoba determines that the goods are not in accordance with the PO, the Vendor must, at the Vendor's expense, remove the rejected goods promptly after the notification of rejection. Final inspection and acceptance or rejection of the goods or supplies shall be made as promptly as practicable. Failure by Manitoba to inspect and accept or reject the goods or supplies shall not relieve the Vendor of its responsibility to provide goods in accordance with the PO requirements and shall not result in liability to Manitoba.
- 13.5 In the event necessity requires the use of the goods or supplies not conforming to the specifications, payment may be "made at an appropriate reduction in price." This obligation will not apply to goods that have been modified or repaired, after receipt by Manitoba, or by anyone not authorized by the Vendor, the manufacturer or the Canadian distributor.
- 13.6 The Vendor shall be responsible for all costs incurred for replacement of goods damaged prior to delivery to Manitoba.
- 13.7 If the goods supplied are rejected by Manitoba, the Vendor must remove the goods at its expense and risk within 10 business days after notification from Manitoba, that the goods have been rejected. Where the Vendor fails to remove the goods in a timely fashion, Manitoba may cause the goods to be removed and will invoice the Vendor directly for any costs. At Manitoba's option, the Vendor shall either replace the goods, or if applicable, issue a credit or refund to Manitoba of all monies paid.

14.0 INVOICING

- 14.1 Goods or services must be invoiced at the price shown on the PO. Any change in price must be authorized by Manitoba. Manitoba will make no additional payments to the Vendor for any changes in the Vendor's assumed cost structure at the time of bid submission including any changes to taxes.
- 14.2 All import or brokerage fees, regardless of the source are payable as part of the unit price and will not be paid for as a separate item. For greater clarity, the Vendor shall be responsible for all import or brokerage fees payable related to the purchase, regardless of the source, including those fees payable to Manitoba's brokers or import service providers.

15.0 CONFLICT OF INTEREST

- 15.1 The Vendor must take appropriate steps to ensure that neither the Vendor, nor the Vendor's employees are placed in a position where there is a conflict of interest, or a perceived conflict of interest between the Vendor, its employees and any agent or representative of Manitoba including the offering or giving of gifts.
- 15.2 If the Vendor has reason to believe any agent, employee or representative of Manitoba has violated any provision of this Conflict of Interest section, the Vendor shall immediately notify Manitoba, Contract Services Branch of the suspected violation by sending notice to the Director of Contract Services Branch, explaining the situation in full. The Vendor's failure to so notify the Director shall be a material breach of this agreement and the Director, at his/her option, may terminate the PO.

16.0 DISCLOSURE OF INFORMATION

- 16.1 Relative to the Freedom of Information and Protection of Privacy Act, the Government of Manitoba reserves the right to publicly disclose details of POs including prices at its discretion, or as required by law.
- 16.2 Neither the Vendor nor its suppliers/vendors, employees nor consultants shall make any public statement regarding the existence or performance of the PO without the prior written consent of

Manitoba, which shall not be unreasonably withheld.

- 16.3 The provision of this condition shall apply during the extension of a PO and indefinitely after its expiry or termination.

17.0 ASSIGNMENT

- 17.1 The Vendor shall not assign or transfer the PO or any of the rights or obligations under the PO without first obtaining written permission from Manitoba. Manitoba may, in its sole discretion, refuse to grant such permission.

18.0 SUBCONTRACTING

- 18.1 The Contractor shall not assign or transfer the PO or subcontract out any of the rights or obligations under the PO without advising Manitoba and obtaining the approval of Manitoba. In the case of any proposed subcontract, the Contractor shall first provide Manitoba with written notice and details thereof, including the name and business address of the proposed subcontractor. Any subcontractor determined by Manitoba to be acceptable, shall be required to comply with all provisions of the PO.
- 18.2 No subcontracting of any of the Contractor's rights or obligations hereunder shall relieve the Contractor of any obligations or undertakings under the PO, except to the extent they are properly performed by the Contractor's permitted subcontractors in accordance with the terms and conditions of the PO.
- 18.3 The PO shall be binding upon the executors, administrators, heirs, successors and any permitted subcontractors of the Contractor.

19.0 RESPONSIBILITY AND LIABILITY

- 19.1 The Vendor shall hold harmless Manitoba and its employees and agents from any and all third party claims, demands, or actions for which Vendor is legally responsible, including those arising out of negligence, willful harm, tort or other breach of law by the Vendor or the Vendor's employees or agents.

20.0 GOVERNING LAW

- 20.1 Unless the PO specifically states otherwise, the PO(s) will be governed and interpreted in accordance with the Laws of Manitoba and where the Vendor uses sources outside of Canada, those businesses shall comply with applicable laws in the country of manufacture.
- 20.2 The Vendor shall be in good standing under The Corporations Act (Manitoba), or properly registered under The Business Names Registration Act (Manitoba), or otherwise properly registered, licensed or permitted by law to carry on business in Manitoba.
- 20.3 All applicable laws of the Province of Manitoba, regulations and standards, including all Occupational Health & Safety, minimum wage and Workers Compensation requirements will govern this PO.
- 20.4 Manitoba requires its Vendors to adhere to applicable Labour Laws, and to declare that in bidding for the work and in entering into a PO, the Vendor and his subcontractors conduct their respective business in accordance with established International Codes as they relate to Child and Forced Labour embodied in United Nations (UN) and International Labour Organization (ILO) conventions as ratified by Canada.

21.0 TERMINATION

- 21.1 Manitoba may, in its sole discretion, immediately terminate a PO in writing if:
- a) the Vendor fails to properly fulfill, perform, satisfy and carry out each and every one of its obligations under the Purchase Order including compliance with governing laws as indicated in the Purchase Order and is therefore in breach of contract; or
 - b) the Vendor has failed to meet the delivery date indicated on the Purchase Order or repeatedly failed to meet the delivery lead time, indicated on the Purchase Order.
 - c) the Vendor fails or refuses to comply with a verbal or written request or direction from Manitoba within three (3) days of receiving the request or direction; or
 - d) the Vendor become bankrupt or insolvent or liquidates; or
 - e) a receiver, trustee or custodian is appointed for the assets of the Vendor, or any partner thereof; or
 - f) the Vendor or any partner thereof makes a compromise, arrangement, or assignment with or for the benefit of the creditors of the Vendor or of that partner, as the case may be; or
 - g) the Vendor or any partner, officer or director of the Vendor is found guilty of an indictable offence; or
 - h) the Vendor at any time engages in any activities or trade practices which, in the opinion of Manitoba, are prejudicial to the interests of Manitoba, or a department or agency thereof; or
- 21.2 Manitoba may, in its sole discretion and for any reason, terminate the Purchase Order at any time by giving written notice to the Vendor prior to the intended termination date.

21.3 All purchases by Manitoba under the Purchase Order are subject to and expressly conditional upon the Legislature of the Province of Manitoba duly appropriating funds to the fiscal year in which they are required to be paid. For the multi-year contracts the term "fiscal year" means the period commencing April 1st of one year and ending on March 31st of the next following year.