

Vendor Standard Purchase Terms and Conditions COVER SHEET

GREATER VICTORIA HARBOUR AUTHORITY

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SCHEDULE “X”

Standard Purchase Terms and Conditions

Each Purchase Order placed by the GVHA for goods and/or services is subject to these standard purchase terms and the terms of the applicable Purchase Order (PO), and is conditional upon Supplier's agreement to such terms. Supplier shall be deemed to have agreed to be bound by such terms by accepting the Purchase Order or commencing the delivery of goods, and/or commencing to perform the services.

PART 1 DEFINITIONS.

A. In these Standard Terms and Conditions, the following definitions apply:

- .1 “Agreement” means the agreement between Supplier and Buyer for the purchase and sale of Goods and/or Services.
- .2 “Buyer” means the Greater Victoria Harbour Authority.
- .3 “Deliverable” means any deliverable or other product or result from Services that is referred to in a Purchase Order, and any related materials, data, documentation, and includes any Intellectual Property Rights developed by Supplier pursuant to such Purchase Order.
- .4 “Delivery Date” means the date of delivery for Goods or performance of Services as specified in a Purchase Order.
- .5 “Delivery Point” means the location identified by Buyer in the Purchase Order to which the Supplier is to deliver Goods and/or perform the services, or such other delivery area or point which is specified in writing by Buyer.
- .6 “Goods” means the goods that are required to be delivered by Supplier pursuant to a Purchase Order, and include all materials, component parts, packaging and labelling of such goods.
- .7 “Intellectual Property Rights” means all intellectual and industrial property rights

and rights of a similar nature including all rights in and to, patents including all issued patents and pending applications therefore and patents which may be issued therefrom (including divisions, reissues, re-examinations, continuations and continuations-in-part); trade-marks; copyrights; industrial design rights; rights pertaining to trade secrets and confidential information; publicity rights; personality rights; moral rights; and other intellectual property rights whether registered or not and all applications, registrations, renewals and extensions pertaining to the foregoing.

- .8 "Purchase Order" means the purchase order between Buyer and Supplier for the purchase and sale of Goods and/or Services, to which these Standard Purchase Terms are attached or are incorporated by reference.
- .9 "Services" means any services to be provided by Supplier to Buyer pursuant to a Purchase Order.
- .10 "Specifications" means the requirements, attributes and specifications for the Goods or Services that are set out in the applicable Purchase Order. Specifications also include:
- .i documentation published by Supplier relating to the Goods or Services;
 - .ii operational and technical features and functionality of the Goods or Services;
 - .iii Standards or levels of service performance for Services; and
 - .iv Buyer business requirements that are expressly set out in a Purchase Order.
- .11 "Supplier" means the party indicated on the face page of the Purchase Order that is contracting with Buyer for the purchase and sale of Goods and/or Services.
- .12 "Supplier Proposal" means any acknowledgement, estimate, quote, offer to sell, invoice, or proposal of Supplier relating to the supply of Goods and/or Services

to Buyer, including any delivered relating to a request for quotations, request for proposal or similar process initiated by Buyer.

.13 "Warranty Period" means in respect of any Goods or Services, the longer of: the express written warranty period provided by Supplier for the Goods or Services; and the period commencing on the date of Acceptance of such Goods or Services and ending on the date that is one (1) year from that date.

PART 2 AGREEMENT.

A. The Agreement consists only of:

- .1 these Standard Purchase Terms;
- .2 the applicable Purchase Order; and
- .3 any Specifications or other documents expressly referenced in the Purchase Order.
 - .i Any reference in the Purchase Order to any Supplier Proposal is solely for incorporating the descriptions and specifications of the Goods and/or Services contained in the Proposal, and only to the extent that the terms of the Supplier Proposal do not conflict with the descriptions and Specifications set out in the Purchase Order.
 - .ii Buyer's acceptance of, or payment for, Goods and/or Services will not constitute Buyer's acceptance of any additional or different terms in any Supplier Proposal, unless otherwise accepted in writing by Buyer.
 - .iii If there is any conflict or inconsistency between the documents constituting the Agreement, then unless otherwise expressly provided, the documents will rank in the order of precedence in accordance with the order in which they are listed in this Section.

PART 3 DELIVERY OF GOODS AND SERVICES.

- A. Supplier agrees to supply and deliver the Goods to Buyer and to perform the Services, as applicable, in a proficient, diligent and timely manner and in accordance with any directives and requirements reasonably prescribed by Buyer from time to time, and on the terms set out in this Agreement.
- B. Supplier shall ensure that all persons it employs or retains to supply and deliver the Goods to Buyer and to perform the Services, as applicable, are competent to do so and are properly trained, instructed and supervised.
- C. Supplier shall, at its own expense, pack, load, and deliver Goods to the Delivery Point and in accordance with the invoicing, delivery terms, shipping, packing, and other instructions printed on the face of the Purchase Order or otherwise provided to Supplier by Buyer in writing. No charges will be allowed for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges unless provided for in the applicable Purchase Order or otherwise agreed to in writing by Buyer. Unless the parties otherwise agree in writing, Supplier shall supply and pay for all labour, materials, supplies, equipment, facilities, approvals and licenses necessary or advisable to perform its obligations under this Agreement.
- D. Time is of the essence with respect to delivery of the Goods and performance of Services. Goods shall be delivered and Services performed by the applicable Delivery Date. Supplier must immediately notify Buyer if Supplier is likely to be unable to meet a Delivery Date. At any time prior to the Delivery Date, Buyer may, upon notice to Supplier, cancel or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of Buyer or due to failure of Supplier to comply with this Agreement, unless otherwise noted.
- E. Title and risk of loss or damage shall pass to Buyer upon receipt of Goods at the Delivery Point, unless otherwise agreed to by the Buyer in writing. Buyer has no

obligation to obtain insurance while Goods are in transit from Supplier to the Delivery Point.

- F. Supplier shall follow all instructions of Buyer and cooperate with Buyer's customs broker as directed by Buyer (including by providing requested shipping documentation) with respect to all Goods that originate from sources or suppliers based outside Canada. Supplier shall comply with all the requirements of the Canada Border Services Agency (or any successor organization) with respect to the importation of Goods from outside Canada.

PART 4 INSPECTION; ACCEPTANCE AND REJECTION

- A. All shipments of Goods and performance of Services shall be subject to Buyer's right of inspection. Buyer shall have **Sixty (60) days** (the "**Inspection Period** ") following the delivery of the Goods at the Delivery Point or performance of the Services to undertake such inspection, and upon such inspection Buyer shall either accept the Goods or Services ("**Acceptance** ") or reject them. Buyer shall have the right to reject any Goods that are delivered more than the quantity ordered or are damaged or defective. In addition, Buyer shall have the right to reject any Goods or Services that are not in conformance with the Specifications or any term of this Agreement.
- B. Transfer of title to Buyer of Goods shall not constitute Buyer's Acceptance of those Goods.
- C. Buyer shall provide Supplier within the Inspection Period notice of any Goods or Services that are rejected, together with the reasons for such rejection.
- D. If Buyer does not provide Supplier with any notice of rejection within the Inspection Period, then Buyer will be deemed to have provided Acceptance of such Goods or Services. Buyer's inspection, testing, or Acceptance or use of the Goods or Services hereunder shall not limit or otherwise affect Supplier's warranty obligations

hereunder with respect to the Goods or Services, and such warranties shall survive inspection, test, Acceptance and use of the Goods or Services.

E. Buyer shall be entitled to return rejected Goods to Supplier at Supplier's expense and risk of loss for, at Buyer's option, either:

- .1 full credit or refund of all amounts paid by Buyer to Supplier for the rejected Goods; or
- .2 replacement Goods to be received within the period specified by Buyer. Title to rejected Goods that are returned to Supplier shall transfer to Supplier upon such delivery and such Goods shall not be replaced by Supplier except upon written instructions from Buyer.
- .3 Supplier shall not deliver Goods that were previously rejected on grounds of non-compliance with this Agreement, unless delivery of such Goods is approved in advance by Buyer and is accompanied by a written disclosure of Buyer's prior rejection(s).

PART 5 PRICE/PAYMENT TERMS.

- A. Prices for the Goods and/or Services will be set out in the applicable Purchase Order. Price increases or charges not expressly set out in the Purchase Order shall not be effective unless agreed to in advance in writing by Buyer.
- B. Supplier will issue all invoices on a timely basis. All invoices delivered by Supplier must meet Buyer's requirements, and at a minimum shall reference the applicable Purchase Order. Buyer will pay the undisputed portion of properly rendered invoices **thirty-five (35)** days from the invoice date.
- C. Buyer shall have the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such



disputed amounts and such withholding of disputed amounts shall not be deemed a breach of this Agreement nor shall any interest be charged on such amounts.

- D. Notwithstanding the foregoing, Buyer agrees to pay the balance of the undisputed amounts on any invoice that is the subject of any dispute within the time periods specified herein.
- E. Buyer may, as a condition of making final payment due to Supplier, require Supplier to execute and deliver a full and final release and discharge in favour of Buyer, in such form as Buyer may prescribe.

PART 6 TAXES.

- A. Unless otherwise stated in a Purchase Order, all prices or other payments stated in the Purchase Order are exclusive of any taxes. Supplier shall separately itemize all applicable taxes each on each invoice and indicate on each invoice its applicable tax registration number(s).
- B. Buyer will pay all applicable taxes to Supplier when the applicable invoice is due. Supplier will remit all applicable taxes to the applicable government authority as required by applicable laws.
- C. Notwithstanding any other provision of this Agreement, Buyer may withhold from all amounts payable to Supplier all applicable withholding taxes and to remit those taxes to the applicable governmental authorities as required by applicable laws.

PART 7 HAZARDOUS MATERIALS.

- A. Supplier agrees to provide, upon and as requested by Buyer, to satisfy any applicable laws governing the use of any hazardous substances either of the following:

.1 all reasonably necessary documentation to verify the material composition, on



a substance by substance basis, including quantity used of each substance, of any Goods, and/or of any process used to make, assemble, use, maintain or repair any Goods; or

.2 all reasonably necessary documentation to verify that any Goods and/or any process used to make, assemble, use, maintain or repair any Goods, do not contain, and the Services do not require the use of, any hazardous substances specified by Buyer.

- B. For the purposes of this Agreement, "hazardous substances" includes anything now or hereafter prohibited, controlled, or regulated under Environmental Laws. "Environmental Laws" means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice, and other lawful requirements of any federal, provincial, regional, municipal, or other governmental authority having jurisdiction now or hereafter in force with respect in any way to the environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity.

PART 8 LEGAL COMPLIANCE; WORKPLACE SAFETY.

- A. In carrying out its obligations under the Agreement, including the performance of Services, Supplier shall comply, and shall ensure that any permitted subcontractors comply with, with all applicable federal, provincial, and municipal laws, regulations, standards, and codes. Supplier shall, without exception maintain registration with WorkSafeBC (Workers' Compensation Board of BC), and shall maintain its workers'

compensation accounts in good standing, and provide Buyer with evidence of good standing upon request.

- B. Supplier shall obtain all applicable permits, licenses, exemptions, consents and approvals required for the Supplier to manufacture and deliver the Goods and perform the Services.

PART 9 PRODUCT WARRANTIES.

- A. Supplier warrants to Buyer that during the Goods Warranty Period all Goods provided hereunder shall be:

- .1 of merchantable quality;
- .2 fit for the purposes intended;
- .3 unless otherwise agreed to by Buyer, new;
- .4 free from defects in design, material and workmanship;
- .5 in strict compliance with the Specifications;
- .6 free from any liens or encumbrances on title whatsoever;
- .7 in conformance with any samples provided to Buyer; and compliant with all applicable federal, provincial, and municipal laws, regulations, standards, and codes.

PART 10 SERVICE WARRANTIES.

- A. Supplier shall perform all Services:

- .1 exercising that degree of professionalism, skill, diligence, care, prudence, judgment, and integrity which would reasonably be expected from a skilled and experienced service provider providing services under the same or similar circumstances as the Services under this Agreement;

- .2 in accordance with all Specifications and all Buyer policies, guidelines, by-laws and codes of conduct applicable to Supplier; and
- .3 using only personnel with the skills, training, expertise, and qualifications necessary to carry out the Services. Buyer may object to any of the Supplier's personnel engaged in the performance of Services who, in the reasonable opinion of Buyer, are lacking in appropriate skills or qualifications, engage in misconduct, constitute a safety risk or hazard or are incompetent or negligent, and the Supplier shall promptly remove such personnel from the performance of any Services upon receipt of such notice, and shall not re-employ the removed person in connection with the Services without the prior written consent of Buyer.

PART 11 INTELLECTUAL PROPERTY WARRANTY.

- A. Supplier further warrants to Buyer that always all Goods and or Services (including any Deliverables) will not be in violation of or infringe any Intellectual Property Rights of any person.

PART 12 MANUFACTURER WARRANTIES.

- A. Supplier shall assign to Buyer all manufacturer's warranties for Goods not manufactured by or for Supplier, and shall take all necessary steps as required by such third-party manufacturers to effect assignment of such warranties to Buyer.

PART 13 WARRANTY REMEDIES.

- A. In the event of breach of any of the warranties in this Section A or *Part 9 Product Warranties Section B*, and without prejudice to any other right or remedy available to Buyer (including Buyer's indemnification rights hereunder), Supplier will, at Buyer's option and Supplier's expense, refund the purchase price for, or correct or replace the affected Goods, or re-perform the affected Services, **within 10 day(s)** after notice by Buyer to Supplier of warranty breach. All associated costs, including costs

of re-performance, costs to inspect the Goods and/or Services, transport the Goods from Buyer to Supplier, and return shipment to Buyer, and costs resulting from supply chain interruptions, will be borne by Supplier.

- B. If Goods are corrected or replaced or Services are re-performed, the warranties in *Part 9 Product Warranties, section B*, will continue as to the corrected or replaced Goods for a further Goods Warranty Period commencing on the date of Acceptance of the corrected or replaced Goods by Buyer. If Supplier fails to repair or replace the Product within the time periods required above, Buyer may repair or replace the Goods at Supplier's expense.
- C. If any Goods provided by Supplier to Buyer are subject to a claim or allegation of infringement of Intellectual Property Rights of a third party, Supplier shall, at its own option and expense, without prejudice to any other right or remedy of Buyer (including Buyer's indemnification rights hereunder), promptly provide Buyer with a commercially reasonable alternative, including the procurement for Buyer of the right to continue using the Goods in question, the replacement of such Goods with a non-infringing alternative satisfactory to Buyer, or the modification of such Goods (without affecting functionality) to render them non-infringing.

PART 14 INTELLECTUAL PROPERTY RIGHTS.

- A. All Intellectual Property Rights in and to each Deliverable shall vest in Buyer free and clear of all liens and encumbrances on receipt of payment by Supplier for each Deliverable. To the extent that any Deliverables contain any intellectual property of Supplier, Supplier hereby grants to Buyer a worldwide, royalty-free, non-exclusive, perpetual license to use, copy, modify and distribute such intellectual property as part of the Deliverables. Supplier agrees to provide to Buyer all assistance reasonably requested by Buyer to perfect the rights described herein, including obtaining all assignments and waivers of moral rights necessary or appropriate to



vest the entire right, title and interest in such materials in Buyer and its successors and assigns.

PART 15 LIENS AND BUILDERS LIEN ACT.

- A. Where the Builders Lien Act, S.B.C. 1997 c. 45 (the "Builders Lien Act") applies and provided that payment is made by Buyer when due according to the terms of this Agreement, Supplier is responsible to ensure that no builders lien or claim of builders lien is filed or claimed by Supplier or any of its employees, personnel or subcontractors, and if any such lien or claim of lien is filed or claimed then Supplier shall, by payment into court or posting of a bond or otherwise, cause the same to be forthwith removed and discharged.

PART 16 CONFIDENTIALITY.

- A. Supplier shall safeguard and keep confidential all information relating to Buyer obtained by it or provided to it by Buyer regarding this Agreement, and shall use such information only for the purposes of carrying out its obligations under this Agreement.

PART 17 INSURANCE.

- A. Supplier represents and warrants to Buyer that it has in place with reputable insurers such insurance policies in coverage and amounts that would be maintained by a prudent supplier of goods and services similar to the Goods and Services provided hereunder, but with a minimum limit of \$3,000,000 in liability including, as applicable, professional errors and omissions liability insurance and comprehensive general liability insurance (including products and completed operations), all-risk contractors' equipment insurance, and automobile liability insurance. In addition, Supplier will take out and maintain, at its own cost, such insurance policies and coverages as may be reasonably required by Buyer from time to time. Supplier will

promptly deliver to Buyer, as and when requested, written proof of such insurance. If requested, Buyer will be named as an additional insured under any such policies.

- B. If requested by Buyer, such insurance will state that it cannot be cancelled, or materially changed to affect the coverage provided under this Agreement, without the insurer providing at least 30 days prior written notice to Buyer.

PART 18 INDEMNITIES.

- A. Supplier shall indemnify, defend and hold harmless Buyer, its affiliates, and their respective officers, directors, employees, consultants, and agents (the "Buyer Indemnified Parties ") from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities brought against or incurred by the Buyer Indemnified Parties or any of them arising out of:

- .1 death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Goods or Services, or from the failure of the Goods or Services to comply with the warranties hereunder;
- .2 any claim that the Goods or Services infringe or violate the Intellectual Property Rights or other rights of any person;
- .3 any intentional, wrongful or negligent act or omission of Supplier or any of its Affiliates or subcontractors;
- .4 Supplier's breach of any of its obligations under this Agreement; or
- .5 any liens or encumbrances relating to any Goods or Services.

PART 19 INDEPENDENT CONTRACTORS.

- B. Supplier will perform its obligations under the Agreement as an independent contractor and in no way, will Supplier or its employees be considered employees,



agents, partners, fiduciaries, or joint ventures of Buyer. Supplier and its employees will have no authority to represent Buyer or its Affiliates or bind Buyer or its Affiliates in any way, and neither Supplier nor its employees will hold themselves out as having authority to act for Buyer or its Affiliates.

PART 20 FURTHER ASSURANCES.

- A. The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable to give full effect to this Agreement and every part thereof.

PART 21 SEVERABILITY.

- A. If any provision of this Agreement is determined to be unenforceable or invalid for any reason whatsoever, in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.

PART 22 WAIVER.

- B. No waiver of any provision of this Agreement shall be enforceable against that party unless it is in writing and signed by that party.

PART 23 ASSIGNMENT.

- A. Supplier may not assign or subcontract this Agreement, in whole or in part, without Buyer's prior written consent. Supplier's permitted assignment or subcontracting of this Agreement or any part thereof will not release Supplier of its obligations under

this Agreement, and it will remain jointly and severally liable with the assignee or subcontractor for any obligations assigned or subcontracted.

- B. The acts of omissions of any subcontractors of Supplier will be deemed to be the acts and omissions of the Supplier.
- C. Buyer may assign this Agreement, in whole or in part, to any Affiliate of Buyer, without the consent of Supplier.
- D. This Agreement shall endure to the benefit of and be binding upon the parties and their respective legal personal representatives, heirs, executors, administrators, assigns or successors.

PART 24 CUMULATIVE REMEDIES.

- A. The rights and remedies of the Buyer in this Agreement are cumulative and in addition to any other rights and remedies at law or in equity.

PART 25 SURVIVAL.

- A. Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of this Agreement.

PART 26 INTERPRETATION.

- A. The headings used in this Agreement and its division into articles, sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders. References in this Agreement to articles, sections, schedules, exhibits, appendices, and other subdivisions are to those parts of this Agreement. Where this



Agreement uses the word “including,” it means “including without limitation,” and where it uses the word “includes,” it means “includes without limitation.”

PART 27 GOVERNING LAW.

- A. This Agreement shall be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein.
- B. The parties hereby submit and attorn to the jurisdiction of the Courts of British Columbia, which will have jurisdiction over any matter arising out of this Agreement.