

## PURCHASE ORDER TERMS AND CONDITIONS

1. **Agreement:** These Purchase Order Terms and Conditions are incorporated by reference and are deemed to be a part of the Purchase Order between the Toronto District School Board (the "TDSB") and the Vendor as set out herein for goods and/or services described therein ("Goods/Services").
2. **Purchase Order Identification:** The Purchase Order number shall appear on all invoices, bills of lading, packing slips, packages and correspondence, as applicable. The TDSB shall not be responsible for Goods/Services provided to the TDSB without a Purchase Order issued by the Purchasing & Distribution Services Department and containing a sequential P.O. Number. The Purchase Order shall include attached lists of materials, specifications or drawings, which shall form a part of the Purchase Order where reference is made thereto.
3. **Prices:** Prices shall include all packing, shipping, prepaid cartage, freight and postage, unless otherwise specified on the Purchase Order. Prices shown are F.O.B. destination. The Vendor shall not execute the Purchase Order at prices higher than those shown on the Purchase Order without the prior written approval of the Purchasing & Distribution Services Department.
4. **Invoicing and Payment:** TDSB shall pay all invoices for Goods/Services provided pursuant to an authorized Purchase Order within 30 days of TDSB's receipt of an invoice. Vendor shall deliver the invoice to the Accounting Department at the address listed on the Purchase Order and accompanied by all documentation required hereunder. Where applicable, taxes shall be shown separately on invoices submitted. All taxes, export duties, fees, banking, charges and other charges incurred on the goods and/or services shall be the responsibility of Vendor and for Vendor's account.
5. **Acceptance/Rejection of Goods/Services:** TDSB shall have 90 days after receipt of Good/Services to accept or reject them as nonconforming with this Purchase Order as determined by TDSB acting reasonably. TDSB's failure to reject any Good/Services within such time frame shall be deemed acceptance thereof. Rejected Good/Services shall be returned to Vendor or promptly corrected by Vendor at Vendor's sole cost, as applicable. TDSB may reject the Good/Services in whole or in part. Vendor agrees that TDSB's payment under this Purchase Order shall not be deemed acceptance of any Goods/Services delivered or performed hereunder. Acceptance shall not relieve Vendor of its warranty obligations or liability for latent defects.
6. **Delivery:** A delivery note bearing a Purchase Order number must accompany Goods/Services in every case. Transfer of ownership of Goods/Services shall occur on an F.O.B. destination basis and upon signature of an authorized TDSB representative accepting delivery. Delivery and/or performance of the Goods/Services must be completed within the term specified in the Purchase Order. TDSB reserves the right to cancel this Purchase Order without liability and/or claim damages in the event of, and Vendor agrees to indemnify TDSB against any loss or liability for, Vendor's failure to fulfill its obligation to deliver the Goods/Services within the term specified in the Purchase Order. In the event of failure or delay in delivery of the Goods/Services due to any reason whatsoever, Vendor shall, without prejudice to the other rights of TDSB, reimburse TDSB for all actual costs incurred by TDSB in respect of the Goods/Services as a result of such failure or delay in delivery of the

Goods/Services. Vendor shall notify the Purchasing & Distribution Services Department immediately if it cannot deliver by the date specified on the Purchase Order.

7. **Packaging:** Vendor shall provide proper and adequate packaging in accordance with prevailing commercial best practices to ensure that Goods/Services shipped to TDSB will be free of damage. Vendor shall use commercially reasonable efforts to utilize recycled/recyclable packaging materials. TDSB reserves the right to reject any and all shipments deemed by TDSB to have been inadequately packaged.

8. **Force Majeure:** TDSB shall not be liable for any delay or failure in taking delivery of all or any part of the Goods/Services, or for any other default in performance of this Purchase Order due to the occurrence of any force majeure event ("Force Majeure"), including without limitation any acts of God, law, regulation, order, direction or guidance of any government or instrumentality thereof, intervention of civil, naval or military authorities, war or hostilities or the threat of apprehension thereof, warlike condition, riot, civil commotion, insurrection, mobilization, revolution, blockade, embargo, strike, lockout, slowdown, sabotage, fire, explosion, plague or other epidemic, quarantine, prolonged failure or shortage of electric current, shortage of petroleum products, fuel or energy sources or other raw materials, accidents to or breakdown of machinery or plant, unavailability or shortage of shipping space or transportation facilities, port facilities or loading or unloading facilities, perils of the seas, accident of navigation, or any other event of any nature whatsoever beyond the control and affecting the activities of TDSB. On the occurrence of any Force Majeure event, TDSB shall have the option to either: (i) extend the time of taking delivery of the Goods/Services or performing its other obligations under this Purchase Order during such period as the event of Force Majeure shall continue; or (ii) terminate unconditionally this Purchase Order wholly or partially. In the event of TDSB exercising such option, Vendor shall accept such extension of time or termination as the case may be and shall not make any claim against TDSB for any damages arising therefrom.

9. **Vendor's Representations and Warranties:** Vendor expressly warrants that all Goods/Services delivered or performed under this Purchase Order shall be: (a) merchantable; (b) free from defects in material and workmanship; (c) fit and sufficient for purposes intended; (d) in strict conformance to applicable specifications, (e) provided in a timely, professional and competent manner and in accordance with all applicable laws and regulations. All warranties specified herein shall be in addition to any other warranties, express or implied or arising by operation of law, custom or usage. This warranty shall survive TDSB's inspection, acceptance and payment. TDSB's continued use of Goods/Services after notifying Vendor of their failure to conform to the Purchase Order or breach of warranty will not be considered a waiver of TDSB's right to a remedy

10. **Vendor's Default:** In the event that Vendor fails to perform any provision of this Purchase Order or of any other contract with TDSB, or is in breach of any express or implied term hereof, or becomes insolvent, or makes an assignment for the benefit of its creditors, or is adjudicated bankrupt or suffers a receiver to be appointed to its business, or makes a material liquidation of its assets, or ceases to do business or to exist, TDSB reserves the right to terminate unconditionally this Purchase Order or any part hereof or any other contracts with Vendor, to reject the Goods/Services or to dispose of it for the account of Vendor at a time and price which TDSB deems reasonable, and Vendor is bound to reimburse TDSB for any loss or damage sustained therefrom, including without limitation loss of profits obtainable from resale

by TDSB of the Goods/Services and damages caused to any customer purchasing the Goods/Services from TDSB.

11. **Rights and Remedies Cumulative:** The rights and remedies of TDSB hereunder are cumulative and in addition to TDSB's rights, powers and remedies existing at law all of which are expressly reserved. No failure by TDSB to give written notice of any default by Vendor in performing any provision of this Purchase Order shall constitute a waiver thereof, nor shall any delay by TDSB in enforcing any of its rights hereunder or at law be deemed a waiver of such rights nor shall a waiver by TDSB of any default of Vendor be deemed a waiver of any other or subsequent default.

12. **Indemnification:** Vendor agrees to indemnify and hold harmless TDSB and its respective assignees, subcontractors, members, shareholders, trustees, directors, officers, managers, partners, employees, agents and consultants from and against all claims, suits, damages and losses, including reasonable legal fees and expenses, that arise from Vendor's negligence, wrongful acts or omissions, or breach of the terms of this PO. The obligations set out herein shall survive the expiration or termination of this Purchase Order.

13. **Confidentiality:** All information given by TDSB to Vendor or otherwise obtained by Vendor relating to the business or operations of TDSB shall be treated by Vendor as confidential and Vendor shall not disclose the same to third parties without TDSB prior written consent. The foregoing shall not apply to confidential information which (i) is in or enters the public domain other than by breach thereof, (ii) is obtained from a third party lawfully, (iii) is or has been independently generated by Vendor, or (iv) is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulated body. TDSB information is and shall remain the property of TDSB and Vendor shall not use such information for any purpose other than where strictly necessary for the provision of Goods/Services in accordance with this Purchase Order.

14. **Termination:** TDSB may terminate this Purchase Order with immediate effect in the event Vendor is in material or persistent breach thereof and Vendor has failed to remedy such breach within ten (10) days after receipt of a written notice requiring it to be remedied. Without further penalty, obligation or liability to TDSB, TDSB may terminate this Purchase Order at any time without cause and without any penalty, obligation or liability to TDSB by giving Vendor at least 20 business days written notice.

15. **No Assignment:** Vendor shall not transfer or assign this Purchase Order or any part hereof without TDSB's prior written consent, which consent may be withheld at the TDSB's absolute discretion.

16. **Dispute Resolution:** All disputes, controversies or claims arising out of or in connection with this Purchase Order in any manner whatsoever including without limitation respecting its formation, execution, validity, application, interpretation, performance, breach, termination, enforcement and the damages and/or other remedies resulting from breach, non-performance or non-compliance with this agreement shall be finally determined under the *Arbitrations Act* (Ontario). The award shall be final and binding upon the parties hereto and judgment on such award may be entered in any court or tribunal having competent jurisdiction.

17. **Access to School Sites:** Vehicles shall not enter or be parked at school sites without first obtaining the authorization of the school Principal or designate. All drivers shall report to the school office to obtain approval.

18. **Driving in School Yards:** When a vehicle is being driven in the school grounds, the driver must comply with the following: (a) vehicles shall not be driven in the school yard when it is crowded and drivers shall wait for the yard to be clear before entering or leaving (i.e., after recess, lunch, etc.); (b) vehicles shall not be driven at a speed exceeding 8 kilometers per hour; (c) no vehicle shall be backed up unless there is a person on foot to guide the driver; and (d) when returning to an unattended vehicle, the driver must circle the vehicle to ensure that no child is hiding behind or under the vehicle before it is driven.

19. **Accidents:** All accidents which occur on a school property, no matter how minor, must be reported immediately to the school Principal.

20. **No Waiver/Amendment:** This Purchase Order may not be modified nor may any right be waived except in writing.

21. **Governing Law:** This Purchase Order shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

22. **Conflict or Inconsistency:** In the event of a conflict or inconsistency between: (a) Instructions to Bidders and Standard Terms and Conditions; (b) CCDC2 – Stipulated Price Contract and TDSB Supplementary Conditions to CCDC2 – Stipulated Price Contract; and (c) Purchase Order Terms and Conditions, the conflict or inconsistency shall be resolved by reading the documents in the following order of precedence:

- (i) Instructions to Bidders and Standard Terms and Conditions;
- (ii) CCDC2 – Stipulated Price Contract and TDSB Supplementary Conditions to CCDC2 – Stipulated Price Contract; and
- (iii) Purchase Order and Purchase Order Terms and Conditions.

23. **Entire Agreement.**

The following documents, in order of precedence, constitutes the entire agreement between the parties with respect to the Goods/Services and supersedes all prior oral or written representations, negotiations, discussions, understanding or agreement, collateral, oral or otherwise with respect to the provision of the goods and/or services existing between the parties at the date of execution of the Contract:

- (a) Instructions to Bidders and Standard Terms and Conditions;
- (b) CCDC2 Stipulated Price Contract and TDSB Supplementary Conditions to CCDC2 Stipulated Price Contract;
- (c) Purchase Order and Purchase Order Terms and Conditions; and
- (d) any other document or addenda issued in connection with this Request entered into between the Board and the Bidder in writing.

