

The following Terms and Conditions, and Instructions (“the Terms and Conditions”) form a part of any Purchase Order(s) (“the Order(s)”) issued by Cowichan Valley School District (“the Purchaser”) to procure from the supplier (“the Vendor”)

**1. Definitions**

- a. “Goods” means the materials and or the supplies set out or referred to in the Order.
- b. “Services” means the machining or work set out or referred to in the Order.
- c. “Contract” means a contract in the form of a Purchase Order consisting of the contract documents identified herein.

**2. Acceptance of the Terms and Conditions** – In the absence of any other acceptance by the Vendor of these Terms and Conditions, shipment of any goods or the commencement of any services by the Vendor under the Order shall constitute such acceptance.

**3. Changes/Amendments/Modifications to the Purchase Order -**

Unless waived or otherwise agreed in writing by the Purchaser, this Purchase Order and its terms shall not be altered, amended, varied, or, modified. Any inconsistent or additional terms or conditions proposed by the Vendor are hereby rejected and shall not bind the Purchaser in any way, unless otherwise specified on the front of this Purchase Order.

**4. Governing Law and Severability** – The laws of British Columbia apply to the interpretation of the Order and any legal action brought in connection with it must be brought in British Columbia. If any provision of the Order is declared of found to be unenforceable, the balance of the Order is to be interpreted and enforced as if the unenforceable provision had never been a part of it.

**5. Payments** - Payments for satisfactory Good and/or Services will be made in lawful money of Canada, unless otherwise specified on the Purchase Order. Send all invoices and accounts payable requests to [accountspayable@sd79.bc.ca](mailto:accountspayable@sd79.bc.ca)

**6. Breach of Contract** – If the Vendor breaches any terms of Terms of Conditions of the Contract, or becomes insolvent, enters voluntary into bankruptcy or receivership proceedings or makes an assignment for the benefit of creditors, the Purchaser shall have the right (without limiting any other rights or remedies which it may have hereunder or by operation of both) to terminate the Contract by written notice to the Vendor, whereupon the Purchaser shall be relieved of all further obligations hereunder except the obligation to pay to the Vendor such part of the Order received and inspected by the Purchaser

**7. Force Majeure** – if either party is prevented from or delayed in performing any of its obligations under the Order by any Act of Nature, fire, armed conflict, terrorism, strike or labour disturbance, government action, acts of public authorities, or by any other cause whatsoever reasonably beyond its control, it is relieved of its obligations under the Order as long as its performance is so prevented or delayed and is not liable to the other party for any loss

caused by such failure of performance or delay. The party claiming to be relieved must give written notice at once to the other party when the occurrence of the cause arises and when it ceases.

The party whose obligation is so suspended must do what is reasonable within its power to perform its obligation and must make reasonable efforts to eliminate the cause or alleviate the effects of the cause preventing or delating performance.

**8. Prices** - Unless otherwise specified, the price inserted on the face of the Purchase Order represents the complete cost to the Purchaser at the point of delivery specified herein and includes every applicable license fee, patent royalty, Government and Municipal tax, levy and charge of every description and charges for crating, boxing and cartage.

**9. Delivery** - Time shall be of the essence of this contract. Delivery shall be completed upon:

- a. The Goods must be delivered strictly in accordance with the quantities, quality and specifications shown, and on the delivery date specified, otherwise the Purchaser shall be at liberty to cancel this contract in whole or in part and to purchase other Goods of the same or similar description to supply such deficiency.
- b. Accepted by the Purchaser pursuant to paragraph 10 hereof.

If the delivery date cannot be met, for reasons beyond the Vendors control, the Vendor shall notify the Purchaser in writing immediately upon becoming aware, setting forth cause and extent of delay. The Purchaser, at its discretion, may grant an extension of the delivery dates or cancel the Order without penalty.

Unless otherwise stipulated, by the use of *Incoterms 2020*, the default Incoterm will be DAP.

**10. Inspection/Quality** - Goods are subject to inspection by the Purchaser notwithstanding prior payment. All or any Goods received by the Purchaser hereunder will be subject to inspection and rejection by the Purchaser and if rejected may be held at the Seller’s risk and expense or returned at the Seller’s expense. The Purchaser reserves the right to retain any portion or all of any shipment not strictly in accordance with the specifications and in such case, will pay a reasonable price therefore, which retention shall not preclude the Purchaser from rejecting the remainder of the shipment or any part thereof and retaining any part thereof which is in accordance with the specifications.

In supplement of and not by way of substitution for any term of the specifications or any warranty stipulated by the parties hereto or either of them on any warranty stipulated or implied by law and notwithstanding prior acceptance of the goods. Seller shall at his own expense replace any goods, or any part or parts thereof, which at any time within one year from delivery thereof become defective as a result of faulty or inefficient manufacture, materials or workmanship.

**11. Patents** - The Vendor shall indemnify the Purchase against any claim of any person, firm or corporation alleging that the sale by the

- Vendor to the Purchaser hereunder constitutes an infringement of patent rights.
12. **Warranty of Title** - Title to all materials and equipment shall be furnished free and clear of all liens, charges or other encumbrances.
13. **Intellectual Property Rights** - The Vendor warrants that the use or sale by the Purchaser of the materials herein will not infringe on any right of invention, patent, trademark, trade secret, and copyright process to manufacture and agrees to indemnify any costs, damages or expenses arising out of any infringement or alleged infringement.
14. **Liability** - The Vendor acknowledges that he is an independent contractor and shall indemnify, protect and save harmless the Purchasers, its agents, employees, successors and assigns from any and all damages, liabilities, and claims of whatsoever nature arising out of the furnishing by the Vendor, its agents or employees, of the materials and/or performing of the services covered by this order or incidental or any ancillary thereto.
- The preceding liability clause is not applicable to consulting services which are subject to the following liability provisions:  
*Notwithstanding the providing of insurance coverage by the School Board, the Consultant hereby agrees to indemnify and save harmless the School Board, its successors, assigns and authorized representatives and each of them from and against any and all liability, whether directly or vicariously caused or incurred, arising or resulting from the operations of the Consultant or any of his Sub-consultant(s) or Sub-Sub-consultant(s) their respective agent(s), servant(s), or employee(s) under this Agreement, excepting always liability arising out of the negligent acts of the School Board its successors, assigns and authorized representatives.*
15. **MSDS** - A current (within 3 years) "Material Safety Data Sheet" (MSDS) is required for each W.H.M.I.S. regulated product/substance/material.
16. **General Conditions** - All items manufactured to the Purchaser's specifications and without intending to restrict the generality of the foregoing including dies, tools, jigs, patterns, gauges, paid for by the Purchaser, are to be delivered upon request of the Purchaser.
- This Purchase Order shall not be assigned or sublet in whole or in part without the previous written approval of the Purchaser.
- The Goods ordered shall be packaged and shipped in accordance with the Purchaser's instructions and good commercial practice and so as to insure that no damage shall result from weather or transportation.
- Any materials used, labour or service expended to provide an estimate or quotation for work or service prior to approval or disapproval by the Purchaser of such estimate or quotation, shall be at the risk and expense of the Supplier.
- All electrics shall be C.S.A. approved, all gas equipment shall meet B.C. Gas Regulations.
- Non-Canadian suppliers must furnish 4 copies of certified customs invoices in accordance with Canadian Customs Regulations.
17. **Site Obligations** – The Vendor shall become familiar with and comply with visitor safety requirements and other matters, conditions, procedures and site activities that may affect the delivery of Goods or Services hereunder.
18. **Insurance Requirements** – The Vendor must, without limiting the Vendors obligation or liabilities and at the Vendors own expense, purchase and maintain throughout the Contract term the following insurances with insurers licensed in Canada in forms and amounts acceptable to the Purchaser, and shall also require such insurance to be purchased and maintained by all sub-contractors engaged in connection with the Contract
- Comprehensive General Liability Insurance in the amount not less than \$2,000,000 with a provision naming the Purchaser as an additional insured and a Cross Liability clause.
  - Motor Vehicle Insurance, including Bodily Injury and Property Damage in the amount no less than \$2,000,000 per accident with the Insurance Corporation of British Columbia on any licensed motor vehicles of any kind to be used to carry out the Work.
  - A provision requiring the Insurer to give the Purchaser a minimum of fifteen (15) days notice of cancellation or laps in or any material change in the insurance policy.
- The Vendor must provide to the Purchaser, within ten (10) days of the receipt of the Order, a certificate of insurance or other evidence which satisfies the Purchaser that the required insurance has been acquired and is in force.
19. **Workers Compensation Board (WorkSafe BC)** – The Vendor and any approved Sub-Contractor must be registered in good standing with WorkSafe BC, in which case WorkSafe BC coverage must be maintained for the duration of the Contract.
- The Vendor must provide to the Purchaser, within ten (10) days of the receipt of the Order, a WCB clearance letter.
20. **Free of Information and Protection of Privacy** - All documents under the control or custody of the Purchaser are subject to the provisions of the Freedom of Information and Protection of Privacy Act and any regulations, rulings and amendments thereto.