

Purchase Order Terms and Conditions

PURCHASE ORDER TERMS AND CONDITIONS

ARTICLE 1 BACKGROUND

1.1 Supplier agrees to provide and Durham Catholic District School Board agrees to purchase the Products set out hereof, subject to the following terms.

1.2 The terms and conditions of any other agreement executed by authorized representatives of the parties and that is applicable to the Products will take precedence over any conflicting terms of this Purchase Order.

1.3 The capitalized terms in this Purchase Order have the following meanings:

- (a) "Claim" means any claim, action, demand, suit or proceeding.
- (b) "Confidential Information" means any and all information and materials, which: (i) are designated in writing, as confidential at the time of disclosure; or (ii) a reasonable person, having regard to the circumstances, would regard as confidential, including Personal Information.
- (c) "FIPPA" means the Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. F.31 as amended from time to time.
- (d) "Good" means any item (tangible or intangible) described in this Purchase Order to be provided by Supplier to Durham Catholic District School Board and includes Work Product.
- (e) "Personal Information" means any personal information which is required to be protected pursuant to any laws, rules, regulations, orders or decisions.
- (f) "Product" means a Good or a Service.
- (g) "Representatives" means, in the case of either party, its directors, officers, employees, agents consultants or subcontractors, as well as the subcontractors' directors, officers, employees, agents, consultants or subcontractors.
- (h) "Services" means the services described in this Purchase Order to be provided by Supplier to Durham Catholic District School Board.
- (i) "Work Product" means any item (tangible and intangible) which is created or produced as a result of the performance of any Services by Supplier hereunder.

ARTICLE 2 DELIVERY

2.1 Unless otherwise agreed in writing by Durham Catholic District School Board, Supplier will provide the Services to Durham Catholic District School Board for the period specified on the Purchase Order the Goods will remain with Supplier until receipt by Durham Catholic District School Board. Durham Catholic District School Board has no obligation to accept any Goods shipped in excess of quantities specified in this Purchase Order.

2.2 Up to two (2) days prior to any Delivery Date, Durham Catholic District School Board in its discretion may postpone that Delivery Date for up to sixty (60) days upon written notice to Supplier.

2.3 Durham Catholic District School Board in its discretion may suspend the delivery of any Services by providing not less than five (5) days written notice of the suspension to Supplier. Durham Catholic District School Board in its discretion may lift any such suspension at any time prior to the scheduled date for completion of the Services by providing written notice to Supplier, and if the suspension is not lifted before such date, the Service will be considered ended.

2.4 Durham Catholic District School Board in its discretion may cancel this Purchase Order by giving written notice of the cancellation to Supplier, after which Supplier will not ship any further Goods or provide any further Services.

ARTICLE 3 ACCEPTANCE OF GOODS

3.1 Within thirty (30) days following the receipt of any Good (the "Test Period"), Durham Catholic District School Board may conduct any tests to determine if the Good meets the requirements of this Purchase Order and is without any fault that, in Durham Catholic District School Board's reasonable view, impairs operation or diminishes the value of that Good in a material way. Durham Catholic District School Board may advise Supplier during the Test Period of any deficiencies in any Good, whereupon Supplier will correct the deficiencies or replace the Good within a further ten (10) days. Durham Catholic District School Board will have a further thirty (30) days (the "Second Test Period") to advise Supplier of any deficiencies. Upon receipt of such further notice, Supplier will, if so requested by Durham Catholic District School Board, promptly refund any amount paid to Supplier by Durham Catholic District School Board, and Durham Catholic District School Board will return the Good to Supplier.

3.2 If Durham Catholic District School Board does not provide Supplier with a notice of any deficiencies in any Good prior to the end of the Test Period or the Second Test Period, as the case may be, the Good will be deemed to be accepted by Durham Catholic District School Board.

3.3 The testing, non-testing or acceptance of any Good by Durham Catholic District School Board does not limit Durham Catholic District School Board's rights or Supplier's obligations with respect to any warranty provided by Supplier hereunder.

ARTICLE 4 WARRANTIES

4.1 Supplier represents and warrants that it holds all licenses, rights, and authorities necessary to perform its obligations under this Purchase Order, and that it has the right and authority to convey to Durham Catholic District School Board title to any Goods, free of any security interest, lien, encumbrance or claim.

4.2 For the period commencing on the acceptance of any Good, in accordance with Article 3, and continuing for a period of one (1) year, or such other period, if any, set out in the Purchase Order (the "Warranty Period"), Supplier warrants that any Good will materially conform to its description in this Purchase Order and any sample, published documentation or specifications for that Good provided by Supplier to Durham Catholic District School Board. Should any Good not meet the warranty set out in this section 4.2, Supplier will promptly and at no additional charge to Durham Catholic District School Board: (a) remedy such non-conformance; or (b) replace the affected Good with an equivalent or superior Good, failing which in addition to any other rights and remedies, Durham Catholic District School Board may require Supplier to provide a full refund of the amount paid by Durham Catholic District School Board for the affected Good, and Durham Catholic District School Board will return the affected Good at Supplier's expense.

4.3 Supplier warrants that any Service provided to Durham Catholic District School Board pursuant to this Purchase Order will be performed in a competent, professional, workmanlike manner, with due care and diligence, using personnel who have proper skills, training and background. Supplier will immediately re-perform any Service for which Supplier is in breach of this warranty at no additional cost to Durham Catholic District School Board. If Supplier is unable to promptly re-perform the applicable Service in accordance with the warranty set out in this section 4.3, then Supplier will promptly refund any amounts paid by Durham Catholic District School Board for the applicable Service.

4.4 Supplier warrants that Supplier has not and will not engage in any activity that creates a conflict of interest (actually or potentially) with Supplier's obligations under this Purchase Order. Supplier will promptly advise Durham Catholic District School Board of any situation which is or may be a conflict of interest.

4.5 Supplier will indemnify and hold Durham Catholic District School Board and its Representatives harmless from all charges, losses, damages and expenses (including legal fees and disbursements) incurred in connection with any Claims brought by a third party incurred by any of them as a result of any Claim that the supply by Supplier or the use by Durham Catholic District School Board of a Product infringes a third party's intellectual property or other rights. Without limiting the foregoing, upon any Claim of infringement being brought by a third party, Supplier will promptly, at the request of Durham Catholic District School Board, procure such rights or modify or replace any Product as may be necessary to remedy such Claim of infringement. Without limiting Supplier's obligations under this section, when responding to any event described in this section, Supplier will use commercially reasonable efforts to minimize any negative impact upon Durham Catholic District School Board.

ARTICLE 5 FEES AND INVOICING

5.1 The cost of any Product is set out on the Purchase Order. Supplier will not charge any further amount.

5.2 Unless otherwise set out in this Purchase Order, Supplier will issue an invoice for Services performed in any month no earlier than the end of such month and not later than thirty (30) days following the end of such month. Supplier may invoice Durham Catholic District School Board for the fees associated with any Good on Durham Catholic District School Board's acceptance of the Good or such other date set out on the Purchase Order. Invoices and payments will be in Canadian dollars and be directed as set out in the Purchase Order. For each invoice so directed, payment will be due thirty (30) days after the date of receipt. No payment for a Product limits Durham Catholic District School Board's rights under Article 3 or 4.

5.3 Supplier may not suspend delivery of the Products or terminate this Purchase Order, except that when Durham Catholic District School Board is in default of the payment of any undisputed invoice for any Product, which default continues for at least thirty (30) days after written notice of default provided to Durham Catholic District School Board, Supplier may terminate this Purchase Order but only for the Product to which the default relates.

5.4 Supplier represents and warrants that the terms and prices, including warranties, discounts, incentives and benefits, offered to Durham Catholic District School Board from time to time for any Products to be provided under this Purchase Order are and will be equivalent to or better than the terms and prices offered by Supplier to any of its other public sector customers in Canada.

ARTICLE 6 INSURANCE

6.1 So long as Supplier is providing Products to Durham Catholic District School Board or has an obligation under sections 4.2 or 4.3, Supplier will maintain, at Supplier's cost, insurance against such risks and in such amounts that could reasonably be expected by persons acting prudently and engaged in similar activities. Supplier will provide evidence of such insurance to Durham Catholic District School Board on demand. Supplier acknowledges that any insurance coverage referred to in this Section 6.1 does not limit or qualify in any manner Supplier's liabilities and obligations related to this Purchase Order.

ARTICLE 7 TITLE

7.1 All right, title and interest in and to any Good, excluding Work Product, provided to Durham Catholic District School Board is assigned to Durham Catholic District School Board upon acceptance of that Good in accordance with Article 3.

7.2 With respect to any Work Product, all right, title and interest in and to that Work Product, including all intellectual property rights therein, will vest in Durham Catholic District School Board upon creation of the Work Product, Supplier waives, and will cause its Representatives who perform any work relating to that Work Product to waive, all moral rights in that Work Product in favour of Durham Catholic District School Board, and will cause such Representatives to execute such agreements as are necessary to convey all right, title and interest in any such Work Product to Durham Catholic District School Board.

ARTICLE 8 LIMITATION OF LIABILITY

8.1 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS PURCHASE ORDER, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, OR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES AS A RESULT OF ANY BREACH OF THE AGREEMENT, OR WITH RESPECT TO ANY MATTER ARISING UNDER OR RELATING TO THE AGREEMENT, WHETHER THE CLAIM IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

8.2 THE LIMITATIONS OF LIABILITY SET OUT IN SECTION 8.1 ABOVE DO NOT APPLY TO: (A) ANY CLAIM ARISING FROM FRAUD, WILFUL MISCONDUCT OR NEGLIGENCE; OR (B) ANY CLAIM ARISING FROM ANY BREACH BY SUPPLIER OR ITS REPRESENTATIVES OF ANY OBLIGATIONS RELATING TO CONFIDENTIALITY, PRIVACY OR SECURITY, OR (C) ANY CLAIM FOR WHICH SUPPLIER IS REQUIRED TO INDEMNIFY Durham Catholic District School Board HEREUNDER.

ARTICLE 9 CONFIDENTIALITY

9.1 Supplier will hold all Confidential Information in confidence; will use the same only to fulfil its obligations under this Purchase Order; will use reasonable care to protect the Confidential Information; will disclose the Confidential Information only to Supplier's Representatives who have a need to know and are required to keep any confidential information of third parties in confidence; will notify Durham Catholic District School Board upon becoming aware of any unauthorized use of the Confidential Information; and will promptly return or destroy, at Durham Catholic District School Board's option, any Confidential Information at Durham Catholic District School Board's request.

9.2 Supplier will comply with any applicable laws, regulations, orders or decisions for the protection of Personal Information.

9.3 Supplier acknowledges that all records created or maintained by Supplier or its Representatives relating to the Purchase Order and any related documents may be governed by the provisions of FIPPA. Durham Catholic District School Board and Supplier will work cooperatively in addressing requests made under FIPPA for any document.

9.4 Supplier will observe, and cause its Representatives to observe, all rules, procedures and policies, as amended from time to time (collectively the "Policies") that are adopted by Durham Catholic District School Board that are communicated to Supplier by Durham Catholic District School Board.

ARTICLE 10 OTHER

10.1 This Purchase Order including all documents referred to herein (including any other agreement executed by authorized representatives of the parties that is applicable to the Products) constitutes the complete agreement between the parties, and supersedes all other communications or agreements, regarding such subject matter. This Purchase Order is for the benefit of, and binding upon the parties, their successors and permitted assigns.

10.2 This Purchase Order may be changed only by a written document signed by authorized representatives of the parties.

10.3 Should any provision of this Purchase Order be held to be invalid by a court of competent jurisdiction, that provision will be enforced to the extent permissible, and all other provisions will remain in effect.

10.4 No waiver of any provision of this Purchase Order will be deemed to be a waiver of any other provision. No term of this Purchase Order will be deemed to be waived by reason of any prior failure to enforce it. No term of this Purchase Order may be waived except in writing.

Those sections which by their nature should survive the termination or expiration of this Purchase Order will remain in full force and effect following the expiration, cancellation or fulfilment of this Purchase Order.

10.5 Supplier may not assign its rights or delegate its duties under this Purchase Order, in whole or in part, without the prior written consent of Durham Catholic District School Board.

The relationship between the parties is that of independent contractors, and not that of partnership, joint venture, employment, franchise or agency. Neither party may incur any obligations on the other's behalf without the other's prior written consent. Neither party will be liable for any failure or delay in its performance under this Purchase Order due to any cause beyond its reasonable control that could not have been avoided by the exercise of reasonable foresight, provided that such party gives the other party prompt notice of such cause and uses commercially reasonable efforts to promptly correct such failure or delay.

10.6 This Purchase Order will be governed by the laws of Ontario and Canada, and the parties consent to the jurisdiction of the courts of Ontario.

10.7 Except for the specific items of Products expressly identified in the Purchase Order, Durham Catholic District School Board makes no guarantee of the value or volume of goods or services to be procured from Supplier. This Purchase Order is not an exclusive contract for the provision of the goods or services of the kind described herein. Durham Catholic District School Board may contract with others for the procurement of goods or services that are the same as or similar to the Products or may obtain the same or similar goods or services internally.

10.8 Supplier will not issue any public notice or press release, or make use of its association with Durham Catholic District School Board, without the prior written consent of Durham Catholic District School Board.