

PURCHASE ORDER GENERAL TERMS AND CONDITIONS

1. Purchase Order (PO) Required: Hamilton-Wentworth District School Board (HWDSB) shall not be responsible for goods and services provided to HWDSB employees without a PO issued by the Procurement and Risk Management Services Department and containing a sequential PO Number. The PO shall include attached lists of materials, specifications or drawings all of which shall form a part of the order where reference is made thereto. Reference to quotation(s) in this order does not imply acceptance of any terms and conditions unless they are expressly adopted herein. Any terms and conditions in such quotation which amend or are inconsistent with the terms and conditions in the tender or this order shall be deemed to be null and void and of no effect. PO number must be shown on all invoices, packages, bills of lading, etc., and all communications related to the order. The seller, by returning this acceptance to HWDSB, or by shipment, shall be deemed to be, and form part of, this order and such tender, order and any schedules attached to this order, constitute the entire agreement between the parties and no other terms and conditions, oral or written, shall have any force or effect unless agreed to, in writing, by both seller and HWDSB. The failure of either party to enforce its rights hereunder shall not constitute a waiver of such rights. Except as otherwise agreed to, in writing, HWDSB reserves the right to cancel this order, in whole or in part, upon written notice to the seller. If cancellation takes place, delivery shall be accepted of all goods, at the contract price, completed prior to the notice of cancellation.

2. Prices: Prices shall include all packing, shipping, prepaid cartage, freight and postage, unless otherwise specified on the order. Seller shall not execute order at prices higher than those shown on the order without the prior written approval of Procurement and Risk Management Services.

3. Payment: HWDSB shall pay all invoices for goods and/or services provided pursuant to an authorized PO within 30 days from date of invoice, unless HWDSB elects to accept an early payment discount, subject to approval that the goods and/or services provided are acceptable. Separate invoice for each order or shipment is required. HWDSB shall not purchase on a cash on delivery (COD) basis.

4. Federal & Provincial Taxes: Where applicable, taxes shall be shown separately on invoices submitted. All taxes, export duties, fees, banking, charges and other charges incurred on the order shall be the responsibility of seller. All invoices charging HST must have the seller HST number clearly identified on the invoice.

5. Delivery Requirements, invoicing, signature for delivery and proof of delivery: Detailed packing slip bearing PO number must accompany goods with every order or shipment. Detailed, separate invoice(s) for each order or shipment, indicating cash discount for prompt payment, covering the goods or services, must be emailed to Accounts Payable (ap@hwdsb.on.ca). Signature must be obtained from an HWDSB employee for all deliveries. All deliveries shall be deemed to be received but not inspected. Unless otherwise specified, all orders are to be shipped prepaid freight on board (FOB) destination.

6. Returns: HWDSB may return merchandise at unit price without penalty, restocking fees and/or handling fees unless otherwise agreed, in writing, by the Procurement and Risk Management Services Department. Any goods that are found at any time to be defective in material, workmanship, quality, quantity, latent defects, fraud, mistakes or otherwise not in strict conformance with current applicable regulatory standards, the specifications or requirements of the tender and this order, HWDSB, in addition to any rights available under warranties or otherwise, shall have the right to reject and return such goods for full credit, all charges collect, including incoming charges. Without limiting the foregoing right of rejection, HWDSB shall have the right to require prompt replacement, repair or correction of defective work or goods at seller's risk and expense. If the seller is unable or unwilling to affect such replacement, repair or correction, HWDSB may do so by using its own workmen, goods, facilities or by outside contract, and shall be entitled to charge the seller for excess costs directly or indirectly occasioned thereby.

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7. Commodities Lost or Damaged in Transit: Loss or damage of goods during transit is the responsibility of seller. Any goods received in a damaged condition must be replaced immediately by seller at their sole cost and expense. HWDSB shall not bear any portion of the cost of such replacement. In the event the seller terminates or abandons the services, either temporarily or permanently, HWDSB may take all necessary steps to complete the services and the seller is responsible for all damages incurred by HWDSB.

8. Delay: Seller shall notify Procurement and Risk Management Services Department immediately if it cannot deliver by the date specified on the PO. HWDSB may, upon written notice to seller, immediately terminate this contract and/or claim damages arising out of or in connection with such delay in shipment.

9. Over shipment: Any over shipments made are the responsibility of the seller. HWDSB reserves the right to reject and return, at the expense of the seller, any goods in excess of the quantity ordered.

10. Force Majeure: HWDSB shall not be liable for any delay or failure in taking delivery of all or any part of the order, or for any other default in performance of this contract due to the occurrence of any event of force majeure ("Force Majeure") including, without limitation, any act 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, HWDSB. On the occurrence of any event of Force Majeure, HWDSB shall have the option either (i) to extend the time of taking delivery of the order or performing its other obligations under this contract during such period as the event of Force Majeure shall continue or (ii) to terminate unconditionally this contract wholly or partially. In the event of HWDSB exercising such option, seller shall accept such extension of time or termination as the case may be, without any claim against HWDSB.

11. Seller's Representations and Warranties: seller warrants: (a) the quality, safety, merchantability and fitness of the commodity for purposes indicated, expressly or implied, by HWDSB; (b) that the commodity conforms to the samples provided by the seller to HWDSB and all specifications and product literature supplied by seller or its agents and representatives to HWDSB; and (c) that the commodity will be fit and sufficient for the purposes intended. If the commodity fails to conform to the foregoing warranty, seller shall, at its own expense, render HWDSB or any party claiming through HWDSB all such service or assistance as HWDSB may reasonably request in enforcing the aforementioned warranty.

12. Seller's Intellectual Property Representations and Warranties: Seller represents and warrants that the commodity and its use and distribution by HWDSB does not infringe upon the intellectual property and other rights of any person, firm or corporation. Seller shall indemnify and hold HWDSB forever harmless from (i) any product liability, and (ii) all liability for infringement of patent, trademark, brand, utility model, design, pattern, copyright or other industrial property rights relating to the commodity.

13. Seller's Default: In the event that seller fails to perform any provision of this contract or of any other contract with HWDSB, 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

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material liquidation of its assets, or ceases to do business or to exist, HWDSB reserves the right to terminate unconditionally this Contract or any part hereof or any other contracts with seller, to reject the order, in full or in part or to dispose of it for the account of seller at a time and price which HWDSB deems reasonable, and seller is bound to reimburse HWDSB for any loss or damage sustained there from.

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

15. No Assignment by Seller: seller shall not transfer or assign this contract or any part hereof without HWDSB's prior written consent.

16. Arbitration: All disputes, controversies or claims arising out of or in connection with this Contract 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, 1991 (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 jurisdiction thereover.

17. General Contractual Terms: This contract constitutes the entire agreement between the parties hereto with respect to the order covered and to the extent that the order supersedes all prior communications or agreements with regard to the subject matter hereof, except any public procurement documents issued by HWDSB in connection with the order. This contract may not be modified or terminated, nor may any right be waived without the express, written instruction of HWDSB. This PO and the contract resulting therefrom shall be governed by and construed in accordance with the laws of the Province of Ontario. Section headings have been inserted for ease of reference and do not form a part hereof.

19. Driving on School Property: 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. Drivers shall wait for the yard to be clear before entering or leaving, e.g. after recess, lunch, etc.; (b) vehicles must not be driven at a speed exceeding 8 kilometers per hour (5 miles per hour); (c) no idling of vehicle on school property. Drivers must turn off vehicles and remove the keys during any stop. At no time are vehicles to be left running while unattended. It is recommended that the vehicle be locked when left unsupervised; (d) no vehicle shall be backed up unless there is a person on foot to guide the driver (except in designated parking areas); (e) 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; and (f) HWDSB will not be responsible for any theft of, or any theft from, vehicles operated by sellers.

20. Entering School Property: Seller must report to the school office and carry photo identification when presenting themselves at any HWDSB location.

21. Non-Permitted Items: Seller shall neither bring onto nor allow the introduction or use of tobacco, alcohol or illegal narcotics or controlled substances upon any HWDSB property.

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

23. Hazardous Materials: A Safety Data Sheet must accompany each shipment. All containers of a controlled substance under Workers Hazardous Materials Information System (WHMIS) regulations must have a Safety Data Label (SDS). One separate label per shipment is not acceptable.

24. Accessibility for Ontarians Act: All HWDSB sellers must comply with the Accessibility for Ontarians with Disabilities Act, 2005 (AODA,2005) and HWDSB's accessibility policies and guidelines. This includes ensuring that all sellers' employees receive training about providing goods or services to persons with disabilities. For further information visit <http://www.hwdsb.on.ca>

25. Contract Signing Authority: To ensure that the individual(s) with the proper signing authority to bind HWDSB do so, all contracts must be processed by the Procurement and Risk Management Services Department. Contracts not signed by the proper signatory are invalid.

26. Indemnity: The seller, the seller's employees, servants and agents will comply with all statutes and regulations of Canada and Ontario. Without limitation of the foregoing, HWDSB relies upon the skill, knowledge and judgement of the seller and the seller covenants and agrees that having acquired full knowledge of the use, function, purchase and application of the goods to be supplied hereunder. The seller shall include in its price for, and forthwith advise HWDSB of, any alterations which may be necessary to ensure that the goods are fit for the said use, function, purpose and application contemplated. The seller further covenants, and agrees to indemnify and save harmless HWDSB, from any and all claims, loss or damages (including special and consequential damage and damages for loss of use) arising directly or indirectly from any breach of the terms of this PO or any contract following thereupon and from any claims, loss or damage of any nature and kind for injury to persons and the destruction of, or damage to, property arising directly or indirectly from the construction, installation and supply of goods to be furnished hereunder or from anything undertaken or done in fulfilling the provisions of this PO or any contract following thereupon.

27. Advertising: The seller shall not, except with the consent of the Procurement and Risk Management Services Department, in writing, release information relating to this order for advertising, promotional or technical purposes or otherwise give it publicity in any fashion nor shall the name of HWDSB be used for, or in connection with, any advertising or promotional purpose of the seller.

28. Compliance with Laws: HWDSB and seller agree that this PO, and any schedules attached to this PO, shall be governed by and construed according to the laws of the Province of Ontario where HWDSB's office issuing the order is located and the courts of such Province of Ontario shall have sole jurisdiction. The seller agrees to, and attorns to, the jurisdiction of the Province of Ontario including all executions and processes issued therefrom.

29. Occupational Health & Safety: The Occupational Health and Safety Act, R.S.O. 1990, c.O.1, as amended from time to time, shall govern the operation of this contract.

30. WHMIS: Safety Data Sheets as regulated by WHMIS must be made available.