



District of Kitimat Standard Terms and Conditions

1. OFFER AND ACCEPTANCE:

The Supplier, by the acceptance of a contract and/or purchase order enters into a binding agreement of purchase and sale with the District of Kitimat (the "District") for the supply of the goods and services subject to these terms and conditions.

The District's placement of the contract and/or purchase order with the Supplier is expressly conditioned upon the Supplier's acceptance of all the terms and conditions.

A District of Kitimat formal contract between the District and the Supplier or Service Provider shall be deemed to supersede all prior agreements, correspondence, and undertakings, whether written or oral, including these Standard Terms and Conditions.

BLANKET/CONTRACT ORDERS RELEASE AUTHORIZATIONS – If this order is a blanket order it shall not be binding on the District except to the extent that the District shall commit itself in written authorization issued to the Supplier. It is understood that the District is not obliged to issue any release authorization whatsoever.

2. REQUIRED DOCUMENTATION

Failure to meet these requirements may result in the goods and/or invoices being returned at the Supplier's cost.

1. The purchase order number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence
2. A separate invoice must be rendered for each shipment or delivery.
3. A packing list must be included with each shipment.
4. Where applicable, serial numbers are to be shown on the invoice including serial numbers of trade-in equipment.
5. The Supplier shall provide all the necessary training and instruction to its personnel, representatives and agents in the storage, handling and use of any product classified as a "Controlled Product" under WHMIS. The Supplier shall provide the appropriate labels and safety data sheets (SDS) for WHMIS regulated products. No product containing asbestos shall be supplied at any time without written authorization. The Supplier shall ensure and fully comply with the Transportation of Dangerous Goods Act and Regulations (T.G.D.) when shipping goods to the District.

3. INVOICES AND PAYMENT

Invoices shall be sent to:

Accounts Payable
270 City Centre
Kitimat BC V8C 2H7
Fax: (250) 632-4650
Email: purchasing@kitimat.ca

Payment by the District shall be made after final acceptance by the District of the goods and services, notwithstanding any previous passing of title to the goods.

Unless otherwise specified, invoice payment terms are net thirty (30) days from the date the goods are received and accepted by the District, or the date the District receives the invoice, whichever is later.

Prices are to include all packing, handling, taxes, duties and are otherwise all-inclusive.

The District may withhold from any payment due to the Supplier an amount sufficient to indemnify the District against any lien or other third party claims that could arise in connection with the provision of the Services.

4. SHIPMENT

Unless otherwise noted on the face of the contract and/ or purchase order shipping terms are Deliver Duty Paid (DDP) Incoterms 2000.

5. CUSTOMS

For all shipments originating outside of Canada, the Supplier shall attach all required customs documents to the shipment. The Supplier will be responsible for paying any excise tax or other customs duties in force at the time of shipment.

Please indicate our Customs Broker's contact information as follows:

Livingston International Inc.
1140 W Pender Street, Suite 500
Vancouver, BC Canada V6E 4H5

Phone: 604-685-3555
Toll Free Phone: 1-800-663-0301
PARS Fax: 1-866-548-4685
Email: cst88219@livingstonintl.com

6. TERMS OF SERVICE

1. The supplier must provide the services as described on the Purchase Order in accordance with this agreement.
2. Unless the parties otherwise agree in writing, the supplier must supply and pay for all labour, materials, facilities and approvals necessary or advisable to perform their obligations under this agreement.
3. Unless otherwise specified in this agreement, the supplier must perform the Services to a standard of care, skill, and diligence maintained by persons providing, on a commercial basis, services similar to the Services.
4. The supplier must ensure that all persons they employ or retain to perform the Services are competent to perform them and are properly trained, instructed, and supervised.
5. The supplier must not assign any of their rights under this agreement without the Districts prior written consent.
6. The supplier must not subcontract any of their obligations under this agreement without the District prior written consent. No subcontract, whether consented to or not, relieves the supplier from any obligations under this agreement. The supplier must ensure that any subcontractor that they retain fully complies with this agreement in performing the subcontracted obligations.
7. The supplier must not provide any services to any person in circumstances which, in the District's reasonable opinion, could give rise to a conflict of interest between the supplier's duties to that person and the supplier's duties to the District under this agreement.

7. DELIVERY

Time is of the essence. The Supplier must immediately advise the Purchasing Representative identified on the purchase order of a shortage or delay of any kind. If delivery of goods and services is not completed by the delivery date, the District reserves the right to terminate this contract and/or purchase order in whole or in part and to purchase substitute goods and services elsewhere and charge the Supplier with any incidental or consequential damages that might be incurred.

8. WARRANTY

Without limitation to any additional warranties provided by the Supplier, whether indicated on the face of the purchase order or otherwise provided, the Supplier warrants that:

1. all goods shall be of merchantable quality and free from defects in workmanship and materials;
2. all goods shall strictly conform to applicable samples, specifications and drawings;
3. all goods and services shall be fit for the purpose intended by the District;
4. all goods shall be free and clear of all liens, charges and encumbrances;
5. the goods and services shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies;
6. the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and
7. the goods and services shall comply with all applicable environmental protection laws and regulations.

Unless a longer warranty period is specified in the contract and/or on the purchase order or is otherwise provided, the foregoing warranty shall be valid for one year from the date of acceptance of the goods and services by the District. If at any time prior to the expiration of any applicable warranty period, any weakness, deficiency, failure, breakdown or deterioration in workmanship or material should appear or be discovered in the goods and services furnished by the Supplier, or if the goods and services do not conform to the terms and conditions of the contract and/or purchase order, the District may at its option:

1. require the Supplier to promptly replace, redesign or correct the defective and non-conforming goods and services at no expense to the District, or
2. the District may replace or correct the defective goods and services and charge the Supplier with all expenses incurred by the District. The Supplier agrees to indemnify and save harmless the District, its members, officers, employees, assigns, agents, clients and the public from any liability, loss, cost and expense arising either directly or indirectly, from breach of any warranty given by the Supplier hereunder.

9. INSPECTION

All goods and services purchased hereunder are subject to inspection and approval by the District upon delivery. The District reserves the right to refuse acceptance of goods and services which are not in accordance with District's specifications or not in compliance with

the Supplier's warranty (expressed or implied). Goods not accepted will be returned to the Supplier at the Supplier's expense. Payment for any good or service hereunder shall not be deemed an acceptance thereof.

10. CANADIAN STANDARDS ASSOCIATION (CSA) AND ELECTRICAL SAFETY

All items produced as a result of the contract and/or purchase order must meet or exceed CSA standards where this standard applies.

Any electrical equipment used in performance of the contract and/or purchase order must be certified by an accredited certification organization acceptable to the District. All costs of approval will be at the Supplier's expense.

11. SOFTWARE

It is the Supplier's responsibility to ensure that the District has all licenses required to use any software that may be supplied by the Supplier pursuant to the contract and/or purchase order.

12. PERMITS AND LICENCES

The Supplier, their employees, agents and vehicles shall have and maintain valid permits and licenses as required by law for the execution of services detailed in the contract and/or purchase order.

The Supplier shall conform to all federal, provincial, and District acts and regulations that may apply to the operation of the contract and/or purchase order. The Supplier is required to obtain and pay for all necessary permits, licenses and inspection fees.

Certified copies of required permits/licenses will be made available upon request by the District.

13. BUSINESS LICENCE

All Suppliers conducting business with the District that operate within the District of Kitimat will maintain a current District of Kitimat business licence.

14. COMPLIANCE WITH ENVIRONMENTAL LAWS

The Supplier shall comply, and cause any other person acting under its authority or control to comply, in all material respects, with all environmental laws (including, but not limited to, obtaining any required permits or similar authorities) relating to the work/materials and/or equipment being supplied.

15. INSURANCE

All Suppliers/Contractors providing services to the District are required at a minimum to carry the following insurance throughout the contract term:

<u>TYPE OF INSURANCE</u>	<u>LIMIT OF LIABILITY</u>
1. Comprehensive General Liability which includes: <ul style="list-style-type: none">• Products/Completed Operations;• Blanket Contractual;• Contractor's Protective;• Personal Injury;• Contingent Employer's Liability;• Broad Form Property Damage• Non-Owned Automobile; Cross Liability Clause.	Bodily Injury & Property Damage \$2,000,000 event/aggregate
2. Automobile Liability Please submit APV47	Bodily Injury & Property Damage \$2,000,000 inclusive
3. Consultants Errors and Omissions Insurance	Injury & Property Damage
Projects under \$500,000 in value	\$ 500,000
Projects between \$500,000 and \$1million in value	\$1,000,000
Projects exceeding \$1million in value	\$2,000,000

All of the foregoing insurance shall be primary and not require the sharing of any loss by any insurer of the District of Kitimat. The Contractor will provide the District with evidence of the required insurance prior to the commencement of the services. Such evidence shall be in the form of a completed Certificate of Insurance. All required insurance will be endorsed to provide the District of Kitimat with 30 days' advance written notice of cancellation or material change. The Contractor hereby waives all right of recourse against the District with regard to damage to the Contractor's property.

16. ADDITIONAL TERMS

Any Deductible or Reimbursable Clause contained in the policy shall not apply to the District of Kitimat and shall be the sole responsibility of the Supplier.

17. WORKSAFE

Any Supplier providing services to the District will strictly comply with all rules and regulations under the Worker's Compensation Act or any successor legislation and will provide a letter of good standing from WorkSafeBC prior to commencement of Work at the designated site(s). The Supplier agrees that it is the "Prime Contractor" for the purposes of the Worker's Compensation Act and Regulations, unless otherwise advised and accepted in writing by an authorized officer, employee or agent of the District.

18. INDEMNIFICATION

The Supplier shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the District, its elected officials, officers, employees and agents (the Indemnitees) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Contract, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.

The Supplier shall defend, indemnify and hold harmless the Indemnitees from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performances, or non-performance of this Contract, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnitees.

19. SUPPLIERS EMPLOYEES

The Supplier's representatives shall be under the exclusive supervision of the Supplier. All responsibility and authority for hiring, training, supervision, direction, compensation, discipline, termination, and administration of the Supplier's representatives, and any and all cost or expenses related thereto, rest exclusively with the Supplier.

20. WAIVER AND LIMITATIONS OF LIABILITY

The Supplier hereby waives and disclaims any right of action or claim against the District (other than for payment of the purchase price set forth on the face of the purchase order) for any liability, loss, cost and expense arising directly or indirectly from its supply of the goods and services listed on the face of the contract and/or purchase order.

If, regardless of the foregoing, the District becomes liable on any basis to the Supplier its liability shall not in the aggregate exceed the purchase price set forth on the face of the purchase order.

Any failure of the District to enforce or require the strict keeping or performance of any of the Terms and Conditions of Purchase will not constitute a waiver and will not affect or impair the District's right at any time to avail itself of such remedies as the District may have for any breach or breaches of such Terms and Conditions.

21. CONFIDENTIALITY

Technical information, specifications, drawings, designs, building and floor plans and other documentation relating to the business or activities of the District disclosed by the District to the Supplier pursuant to this contract and/or purchase order shall be held in strict confidence by the Supplier and shall remain the exclusive property of the District and may not be copied or reproduced without the express written consent of the District.

The Supplier acknowledges that the District is subject to the Freedom of Information and Protection of Privacy Act of British Columbia and agrees to any disclosure of information by the District required by law.

The Supplier agrees to return to the District all of the District's property at the completion of the Goods and/or Services, including any and all copies or originals of reports provided by the District.

22. CONFLICT OF INTEREST

It is the Supplier's sole responsibility to disclose to the District if any Council member for the District or any person who was a Council member for the District at any time during the previous six (6) months, has or will have a direct or indirect pecuniary interest in this order and/or any contract executed with the District.

23. INTELLECTUAL PROPERTY

The Supplier shall defend, indemnify and hold harmless the District, its members, officers, employees, agents, clients, and the public from any expense, cost, loss, claim, damage, judgment or liability for infringement or alleged infringement of third party intellectual property rights including any patent, copyright, industrial design, trademark or trade secret with respect to the goods and services and their process of manufacture. The Supplier shall at its own expense defend or assist in the defence of, at the District's option, any action in which such infringement is alleged.

24. COMPLIANCE WITH LAWS

In accepting the contract and/or purchase order, the Supplier represents that it has complied and shall continue during the performance of this contract and/or purchase order to comply with the provisions of all applicable third party contracts, and all applicable federal,

provincial and municipal laws and regulations. The laws of British Columbia govern this agreement.

25. NO PROMOTION OF RELATIONSHIP

The Supplier must not disclose or promote its relationship with the District, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials without the express prior written consent of the District.

26. ASSIGNMENT

No right of interest in this contract and/or purchase order shall be assigned by either party without the written consent of the other and no delegation of any obligation owed, or of the performance of any obligation by either the District or Supplier shall be made without the written consent of the other party.

27. CHANGES/MODIFICATIONS/TERMINATION

The District reserves the right at any time, to cancel or terminate this contract and/or purchase order in whole or in part by written or verbal notice confirmed in writing or to make changes in any one or more of the following: quantity, specifications, methods of shipment or packing, and place or timing of delivery. If any such change causes a change in the cost of or the time required for performance of this contract and/or purchase order, an equitable adjustment shall be made in the price or delivery schedule, or both. No agreement or understanding to modify this contract and/or purchase order shall be binding on the District unless in writing and authorized by the District's authorized agent.

28. INDEPENDENT CONTRACTORS

Supplier shall be an independent contractor and shall at no time be considered to be an agent, servant, or partner of the District.

29. SET-OFF

The District may set-off against any amounts owed to Supplier under these terms and conditions on any Purchase Order or any amounts that become due or owing it to Supplier by the District.

30. DISPUTE RESOLUTION

The parties will make reasonable efforts to resolve any dispute, claim, or controversy arising out of this Agreement or related to the Purchase Order ("Dispute") using the dispute resolution procedures set out in this section.

Negotiation: The parties will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate negotiations.

Mediation: If all or any portion of a Dispute cannot be resolved by good faith negotiations within thirty (30) days, either party may by notice to the other party refer the matter to mediation. Within seven (7) days of delivery of the notice, the parties will mutually appoint a mediator. If the parties fail to agree on the appointment of the mediator, then either party may apply to the British Columbia International Commercial Arbitration Centre for appointment of a mediator. The parties will continue to negotiate in good faith to resolve the Dispute with the assistance of the mediator. The place of mediation will be Kitimat, British Columbia. Each party will equally bear the costs of the mediator and other out-of-pocket costs, and each party will bear its own costs of participating in the mediation.

Litigation: If within ninety (90) days of the request for mediation the Dispute is not settled, or if the mediator advises that there is no reasonable possibility of the parties reaching a negotiated resolution, then either party may without further notice commence litigation.

31. FORCE MAJEURE

The parties are not liable for failure to perform the obligations as set out in the contract and/or purchase order as a result of acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, war, labour dispute, strike, lockout. If the Supplier asserts Force Majeure as an excuse for failure to perform their obligations, they must prove that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that the Supplier substantially fulfilled all non-excused obligations, and that the District was timely notified of the likelihood or actual occurrence of the event which invoked the force majeure.

Questions or comments?

Contact the District of Kitimat Purchasing Department - Phone (250) 632-8925 Fax (250) 632-4650 email purchasing@kitimat.ca