



# WESTBANK FIRST NATION

## Terms and Conditions of Purchase

### REQUIRED DOCUMENTATION:

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

- a. The purchase order number must be shown on all related invoices, shipping papers, transportation bills, packages, packing lists and correspondence.
- b. Unless otherwise agreed to a separate invoice must be rendered for each shipment or delivery and mailed or delivered with the goods to the Department/Division/Branch shown on the front of the purchase order. All invoices must bear a unique reference (invoice) number.
- c. A packing list must be included with each shipment applied against this purchase order.
- d. Where applicable, serial numbers are to be shown on the invoice including serial numbers of trade-in equipment.
- e. The Supplier shall provide appropriate labels and material safety data sheets for WHMIS regulated products. No product containing asbestos shall be supplied at any time without written authorization.

### OFFER AND ACCEPTANCE:

The Supplier, by the execution of this purchase order or by the commencement of performance enters into a binding agreement of purchase and sale with the Westbank First Nation (the "WFN") for the supply of the goods and services as listed on the face of this purchase order subject to these terms and conditions.

The WFN's placement of this purchase order with the Supplier is expressly conditioned upon the Supplier's acceptance of all the terms and conditions contained on, attached to, or expressly incorporated by reference in this purchase order.

Any terms and conditions proposed by the Supplier that are inconsistent with or in addition to the terms and conditions of this purchase order are void and of no effect, whether provided in an invoice, confirmation of purchase or other instrument.

### PAYMENT:

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

### TAXES:

The WFN is not subject to the HST. The goods covered under this Purchase Order are required by the Westbank First Nation in respect of either management activities or real property located on reserve and are therefore not subject to HST.

### PRICES/TERMS OF SHIPMENT:

Unless otherwise noted on the face of the purchase order:

- a. prices and shipping terms are DDP (Incoterms 2010); and
- b. prices include all packing, handling, cartage, taxes, duties and are otherwise all-inclusive.

### DELIVERY:

Time is of the essence. The Supplier must advise immediately of any shortage or delay of any kind. If delivery of goods and services is not completed by the delivery date, the WFN reserves the right to terminate this 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.

### 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: (a) all goods shall be of merchantable quality and free from defects in workmanship and materials; (b) all goods shall strictly conform to applicable samples, specifications and drawings; (c) all goods and services shall be fit for the purpose intended by the WFN; (d) all goods shall be free and clear of all liens, charges and encumbrances; (e) the goods and services shall comply with the standards set forth by applicable federal, provincial, municipal and industry regulatory agencies; (f) the shipping and handling of any hazardous material will be made in accordance with all applicable laws and regulations; and (g) the goods and services shall comply with all applicable environmental protection laws and regulations.

Unless a longer warranty period is specified on the face of 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 WFN. 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 this purchase order, the WFN may at its option (a) require the Supplier to promptly replace, redesign or correct the defective and non-conforming goods and services at no expense to the WFN, or (b) the WFN may replace or correct the defective goods and services and charge the Supplier with all expenses incurred by the WFN. The Supplier agrees to indemnify and save harmless the WFN, 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.

### INSPECTION:

All goods and services are subject to inspection and approval by the WFN upon delivery. The WFN reserves the right to refuse acceptance of goods and services which are not in accordance with WFN'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. The WFN will not be deemed to have accepted goods and services by virtue of a partial or full payment for them and in no event unless and until the WFN gives the Supplier written confirmation of acceptance following the WFN's receipt, inspection and approval of the goods and services.

### PASSAGE OF TITLE/RISK:

Despite any other term of this purchase order, risk of loss or damage to the goods and services will remain with the Supplier until the receipt, inspection and written approval of the goods and services by the WFN.

**INSURANCE:**

The Supplier shall purchase and maintain insurance appropriate for a prudent supplier of the goods and services. The Supplier shall provide proof of such insurance, if so requested by the WFN.

**INDEMNITY:**

The Supplier agrees to indemnify and save harmless the WFN, its members, officers, employees, assigns, agents and clients from any liability, loss, cost and expense arising directly or indirectly from claims, proceedings and investigations ("Losses") advanced by or on behalf of third parties to the extent such Losses are caused or contributed to by any breach of this agreement by the Supplier or negligence or willful misconduct by the Supplier or other party for whom the Supplier is responsible.

**WAIVER AND LIMITATIONS OF LIABILITY:**

The Supplier hereby waives and disclaims any right of action or claim against the WFN (other than for payment of the purchase price set forth on the face of this 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 this purchase order.

If, regardless of the foregoing, the WFN 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 this purchase order.

**WORKSAFEBC:**

The Supplier shall maintain registration with WorkSafeBC and adhere to all WorkSafeBC practices relevant to the goods and/or services to be delivered by the Supplier under the terms of this purchase order.

**WFN SUPPLIED PROPERTY:**

Title to any items which have been supplied to the Supplier by the WFN, or paid for by the WFN, in advance of delivery by the Supplier of the goods and services ordered on the face of the purchase order, shall at all time be vested in the WFN. The risk of loss for such items shall remain with the Supplier until delivery to the WFN of such items, in the same conditions as originally received by the Supplier. The Supplier hereby agrees to be responsible for any and all loss or damage to the WFN's property while such property is in its possession or control.

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

**INTELLECTUAL PROPERTY:**

The Supplier shall defend, indemnify and hold harmless the WFN, 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 defense of, at the WFN's option, any action in which such infringement is alleged.

**COMPLIANCE WITH LAWS:**

In accepting this purchase order, the Supplier represents that it has complied and will continue during the performance of this purchase order to comply with the provisions of all applicable third party contracts, and all applicable laws. This contract shall be governed by and construed in accordance with the laws of Westbank First Nation, Canada and the Province of British Columbia, as applicable. The courts of British Columbia and Canada, as applicable, will have exclusive jurisdiction to determine all disputes and claims arising out of or in any way connected with this contract.

**NO PROMOTION OF RELATIONSHIP:**

The Supplier must not disclose or promote its relationship with the WFN, 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 WFN.

**ASSIGNMENT:**

This purchase order shall not be assigned or subcontracted by the Supplier without the prior written consent of the WFN.

**CHANGES/MODIFICATIONS/TERMINATION:**

The WFN reserves the right at any time, to cancel or terminate this 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 purchase order, an equitable adjustment shall be made in the price or delivery schedule, or both. No agreement or understanding to modify this purchase order shall be binding on the WFN unless in writing and signed by the WFN's authorized agent.