

Purchase Order Terms & Conditions

Suppliers of goods pursuant to this Purchase Order agree that the following are fundamental terms governing the commercial relationship between the Supplier and the Corporation of the Town of Grimsby (the “Town”). The Supplier shall raise any concerns about the terms and conditions when the Supplier receives the purchaser order as soon as possible and not after supplying the Deliverables. Absent any agreed upon amendments, made in writing with the Town, the following terms shall govern the agreement between the Supplier and the Town.

Article 1 - Interpretation

1. **Definitions:** In these Standard Purchase Order Terms, the following definitions apply.
 - a. **“Business Day”** means any day excluding a Saturday or Sunday or statutory holiday in the Province of Ontario, and also excluding any day on which the principal chartered banks located in the Town of Grimsby are not open for business;
 - b. **“Confidential Information”** means all non-public, confidential or proprietary information (including Personal Information), whether oral, written, visual, electronic, or in any other form, relating in any way to the Purchase Order or made available to the Supplier at any time in connection with the Purchase Order and the Goods and/or the Services provided hereunder, whether or not identified as “confidential”, but does not include information which:
 - a. is or becomes public knowledge other than by breach of the Purchase Order;
 - b. Is in the Supplier’s possession without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Supplier; or
 - c. has been independently developed by the Supplier or acquired from a source which was not subject to a duty of confidentiality to the Town;
 - c. **“Conflict of Interest”** includes, but is not limited to, a situation or circumstance, real or perceived, which could give a Supplier or Bidder an unfair advantage during a procurement process or compromise the ability of the Supplier or Bidder to perform its obligations under their contract; and/or a situation where a personal, business or other interest of an elected or appointed official, officer or employee of the Town is, or can be reasonably be perceived to be, in conflict with the interests of the Town, and includes, but is not limited to:
 - i. the giving or receiving of a direct or indirect personal gain or benefit, or a direct or indirect advantage or privilege, by any person or business that offers Deliverables to the Town;
 - ii. a direct or indirect interest in any business that provides Deliverables to the Town; or
 - iii. a conflict of interest as defined in the Municipal Conflict of Interest Act;
 - d. **“Contract”** means the Purchase Order and includes the following:
 - i. These Purchase Order Terms and Conditions;
 - ii. The Purchase Order;
 - iii. The procurement documents - including, without limitation, Solicitation Documents (Request for Proposal, Quote, Tender, any addenda, and bid documents submitted by the Supplier), if any, pursuant to which the Purchase Order is issued; and
 - iv. The scope of work and specifications applicable to the Purchase, if any;

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- e. “**Deliverables**” means the goods and any related services, or construction, or combination thereof as described in the Purchase Order;
- f. “**Dispute**” means a claim, dispute or controversy of any kind arising out of or in connection with the Purchase Order;
- g. “**EFT**” means Electronic Funds Transfer;
- h. “**Goods**” means supplies, materials, equipment or other things (if any), specified in the Purchase Order (including any part of the goods specified);
- i. “**Indemnified Parties**” means the Town, its elected officials, directors, officers, agents, employees and volunteers;
- j. “**Industry Standards**” include, but are not limited to: (a) the provision of all labour, supplies, equipment and other goods or services that are necessary and can reasonably be understood or inferred to be included within the scope of the Contract or customarily furnished by parties providing goods or services similar to the Deliverables in similar situations in Canada and; (b) adherence to commonly accepted norms of ethical business practices, which will include the Supplier establishing, and ensuring adherence to, precautions to prevent its employees or agents from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by the Town;
- k. “**Intellectual Property Rights**” includes all industrial and intellectual property rights and rights of a similar nature whether protected by statute, at common law, or in equity, including all rights in and to, patents, patent disclosures and inventions (whether patentable or not), copyright, trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered and unregistered trademarks, service marks, circuit layout designs and rights in relation to circuit layouts, together with the goodwill associated with the foregoing and any derivative works and all other rights in and to all documents, work product, and other materials delivered to the Town under the Purchase Order or in the course of performance of the Services, and all applications, registrations, renewals and extensions pertaining to the foregoing;
- l. “**Invoice**” means an invoice submitted by the Supplier in accordance with Article 5.0;
- m. “**Personal Information**” as defined in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as in effect at any time;
- n. “**Purchase Order**” means the purchase order for the Deliverables issued by the Town to the Supplier containing, among other things, a description of the Deliverables and includes these Purchase Order Terms and Conditions;
- o. “**Rates**” means the price, in Canadian funds, to be charged for the Deliverables, as set out in the Contract, representing the full amount chargeable by the Supplier for the provision of the Deliverables, including but not limited to: (a) all applicable duties and taxes; (b) all labour and material costs; (c) all travel costs; (d) all costs associated with insuring, transporting and delivering the Deliverables to the Town at its address specified on the Purchase Order; (e) all insurance costs; and (f) all other overhead, including any fees or other charges required by law;

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- p. “**Related Entities**” include directors, officers, employees, agents, partners, affiliates, volunteers, permitted assigns and permitted subcontractors;
- q. “**Requirements of Law**” means all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, municipal by-laws, rules, regulations, official plans, permits, licenses, authorizations, directions, and agreements with all authorities that now or at any time hereafter may be applicable to either the Contract or the Deliverables or any part of them;
- r. “**Supplier**” means the supplier identified on the face of the Purchase Order; and
- s. “**Town**” means The Corporation of the Town of Grimsby.

Article 2 – General Terms

2.01 Governing Law & Dispute Resolution

The Contract will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

In the event of any dispute, disagreement, controversy, question or claim arising out of, in relation to, or in connection with this Agreement, (collectively a “Dispute”), which cannot be amicably settled by negotiation may be settled by arbitration or court proceeding. The Town may elect to either settle the dispute by arbitration or by court proceeding.

In the event that the Town elects to settlement the Dispute by arbitration, the Town shall appoint a neutral, third-party arbitrator. The Town shall appoint an arbitrator within 60 days of a demand for arbitration from a Supplier. If the Supplier does not agree that the Town appointed arbitrator is neutral, the Supplier may commence a court application for the appointment of an arbitrator. The arbitration of a Dispute shall be in accordance with the *Arbitration Act, 1991*, S.O. 1991, c. 17. The Town and the Supplier shall bear their own costs of the arbitration and in equal part share the cost of the arbitrator.

In the event the Town elects to initiate any legal proceedings in any court or tribunal regarding the Deliverables or the Supplier’s performance under the Contract, the Supplier hereby irrevocably attorns to the jurisdiction of Province of Ontario. The forum of hearing a dispute, shall be a court proceeding to take place in the geographic Niagara Region or the City of Toronto, unless the Parties agree otherwise.

2.02 Entire Contract

The Contract, together with any additional documentation referenced in the Purchase Order, sets forth the entire agreement between the parties with regard to the provision of the Deliverables and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the parties. In the event of any ambiguity, conflict or inconsistency between these Purchaser Order Terms and Conditions and any terms and conditions contained in any acknowledgement, order or any other form issued by the Supplier, these Purchase Order Terms and Conditions will prevail. Changes to the Contract will only be made by the issuance of revised terms Purchase Order by the Town to the Supplier.

In the event that the Supplier provides the Town with the Supplier’s terms and conditions, those terms and conditions will not form part of the Contract unless the Town expressly agrees in writing to be bound by all or any of those terms and conditions.

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2.03 Notices

Notices under the Contract shall be in writing and will be delivered by regular mail, personal delivery or email and shall be addressed to the contact identified on the face of the Purchase Order.

2.04 Severability

If any term or condition of the Contract is to any extent invalid or unenforceable, the remainder of the Contract, and the application of such term or condition (except to the extent to which it is held invalid or unenforceable), will not be affected.

2.05 No Indemnities from Town

Nothing in the Contract, whether express or implied, will directly or indirectly increase the indebtedness or contingent liabilities of the Town beyond the obligation to pay the Rates in respect of Deliverables accepted by the Town.

2.06 Force Majeure

Neither party shall be liable for damages caused by delay or failure to perform its obligations under the Contract where such delay or failure is caused by an event beyond its reasonable control, such as natural disasters, acts of war, insurrection and terrorism. If a party seeks to rely on a force majeure event, that party shall immediately notify the other party of the reason for and anticipated period of any delay.

For purposes of this agreement, "Force Majeure Event" means, with respect to a party, any event or circumstance, regardless of whether it was foreseeable, that was not caused by that party and is beyond a party's control that makes it impossible for a party to comply with any of its obligations under this agreement, such as a municipal, provincial or federal government declared emergency, a natural disaster, a cyber attack, pandemic, an Act of God, an act of war or terrorism, a sustained electricity blackout, except that a Force Majeure Event will not include a strike lockout or labour dispute, an increase in prices, increased regulatory obligations, a change in law, inclement weather including snow storms where an emergency has not been declared by a municipal, provincial or federal government.

- a. If a Force Majeure Event occurs, the party that is prevented by that Force Majeure Event from performing any one or more obligations under this agreement (the "Nonperforming Party") will be excused from performing those obligations, on condition that (1) the Nonperforming Party used reasonable efforts to perform those obligations, (2) the Nonperforming Party's inability to perform those obligations is not due to its failure to take reasonable measures to protect itself against the event or circumstance giving rise to the Force Majeure Event, and (3) the Nonperforming Party complies with its obligations under (b).
- b. Upon occurrence of a Force Majeure Event, the Nonperforming Party shall promptly notify the other party of occurrence of that Force Majeure Event in writing, its effect on performance, and how long that party expects it to last. Thereafter the Nonperforming Party shall update that information as reasonably necessary. During a Force Majeure Event, the Nonperforming Party shall use reasonable efforts to limit damages to the other party and to resume its performance under this agreement. In no circumstances shall a Force Majeure Event result in a claim for increased costs or fees for a Contractor in the performance of its obligations to the County under this Agreement.

In the event that the Town agrees a Force Majeure Event persists and delays performance for more than 90 days, the Town shall escalate the payment terms in accordance with the Consumer Price Index ("CPI").

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2.07 Survival

This paragraph and paragraphs 2.01, 2.04, 2.05, 2.09, 2.10, 3.02, 3.05, 4.02, 6.03, 6.04 will survive the termination or expiry of the Contract, as will any other provision which by its nature ought to reasonably survive such termination or expiry.

2.08 No Implied Waiver

The failure of either party at any time to require performance by the other party of any provision of the Contract will in no way affect that party's right thereafter to otherwise enforce such provision or to seek damages for the breach thereof.

2.09 Confidentiality

The Supplier shall safeguard and keep confidential all Confidential Information and shall use such Confidential Information only for the purposes of carrying out its obligations under the Contract and in the case of the Town, reporting to Council, if required.

The Supplier shall, within five (5) business days (or such other period agreed to in writing by the Town) after a direction by the Town to do so, return or destroy all Confidential Information in the Supplier's possession, custody or control.

If the Town or the Supplier is required by law to disclose Confidential Information, it shall promptly notify the other party so that party may take action to prevent the disclosure.

The Supplier specifically acknowledges that the Town is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, and that the Purchaser may be compelled by law to disclose certain Confidential Information.

2.10 Privacy

Where the Supplier collects, obtains, uses or discloses Personal Information in connection with the Contract, the Supplier shall:

- (a) comply with all applicable privacy law, including privacy laws that apply to the Town; and
- (b) take all appropriate measures against the unauthorized or unlawful collection, use or disclosure of Personal Information and against accidental loss, destruction of, or damage to Personal Information.

Article 3 – Relationship between Town and Supplier

3.01 Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power to enter into the Contract and there is no agreement or consent requirement with any other party that would in any way interfere with the rights of the Town under this Contract.

3.02 Supplier not a Partner, Agent or Employee

The Supplier will have no power or authority to bind the Town or to assume or create any obligation or responsibility, express or implied, on behalf of the Town. The Supplier shall not hold itself out as an agent, partner or employee of the Town. Nothing in the Contract will have the effect of creating an employment, partnership or agency relationship between the Town and the Supplier or any of the Supplier's Related Entities. The Supplier is an independent contractor of the Town and the Supplier is responsible for its legal obligations toward its employers and permitted sub-contractors.

3.03 Non-Exclusive Contract, Work Volumes

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The Town makes no representation regarding the volume of goods and services required under the Contract and reserves the right to contract with other parties for goods and services the same as or similar to the Deliverables.

3.04 Reservation of Rights

The Town reserves the right to:

- a. order additional units Deliverables or purchase parts of the Deliverables as will best serve the interests of the Town in its opinion;
- b. waive irregularities and technicalities in its sole discretion; and
- c. set off or terminate the Contract where the Town determines that the Supplier is in any way indebted to the Town.

3.05 Responsibility of Supplier

The Supplier agrees that it is liable for the acts and omissions of its Related Entities. The Supplier shall advise its Related Entities of their obligations under the Contract and shall ensure their compliance with the applicable terms of the Contract.

3.06 No Subcontracting or Assignment

The Supplier shall not subcontract or assign the whole or any part of the Contract without the prior written consent of the Town. Such consent shall be in the sole discretion of the Town and subject to the terms and conditions that may be imposed by the Town. Nothing in the Contract, or in such consent, creates a contractual relationship between any subcontractor and the Town unless agreed to in writing by the Town.

In the event that the Town agrees to assign this Contract in whole or in part, the permitted assignee shall be bound by all of the Terms and Conditions contained in this Contract. The Supplier assignor shall indemnify the Town for any losses or damages cause by the permitted assignee.

3.07 Conflict of Interest

The Supplier shall: (a) avoid any Conflict of Interest in the performance of its contractual obligations; (b) give notice to the Town without delay of any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and (c) comply with any requirements prescribed by the Town to resolve any Conflict of Interest.

3.08 Contract Binding

The Contract can be enforced by and is binding upon the parties and their successors, executors, administrators and their permitted assigns.

Article 4 – Performance by Supplier

4.01 Deliverables Warranty

The Supplier represents and warrants that:

- a. It shall provide the Deliverables diligently in a professional and competent manner by persons qualified and skilled in their occupation in accordance with: (a) the Contract; (b) Industry Standards; and (c) the Requirements of Law; and
- b. The Deliverables shall be free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications and free from liens or encumbrance on title;
- c. The Supplier shall supply everything necessary for the supply of the Deliverables;
- d. The Rates have been arrived at independently from the prices of any other prospective vendor and are in all respects fair and without collusion or fraud;

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- e. The Rates are an upset limit above which the Town is not required to pay and that, where there is any uncertainty as to price, the unit price will govern;
- f. The Town shall not be liable for any costs incurred by the Supplier in negotiating terms provided for in the Contract;
- g. It has made no attempt, and shall make no attempt, to induce any other person to not present similar Deliverables to the Town for the purpose of restricting competition;
- h. It has the experience, training and equipment to ensure that the Deliverables will be provided safely and in accordance with all applicable health and safety legislation;
- i. It has control over its workplace and is fully responsible for the health and safety of all employees and other persons in the workplace;
- j. The production, use or sale of the Deliverables purchased under this Contract will not infringe any patent, copyright or trademark;
- k. The Supplier shall assign to the Town all manufacturer's warranties for Deliverables not manufactured by or for the Supplier, and shall take all necessary steps as required by such third-party manufacturers to effect assignment of such warranties to the Town; and
- l. The Supplier shall incorporate accessibility design and features in the Deliverables unless, prior to the supply of the Deliverables to the Town, the Supplier has received written notice that the Town has determined that it is not practicable to incorporate accessibility design and features in the Deliverables.

The Supplier acknowledges that the Town is relying on the foregoing warranties in its decision to award the Contract to the Supplier.

4.02 Delivery

Unless otherwise stated on the face of the Purchase Order, the Supplier shall deliver all Deliverables F.O.B. Destination, Freight Prepaid. No transportation or delivery charges of any kind, including, without limitation, packing, boxing, storage, cartage or customs brokerage charges, shall be paid by the Town, unless specifically provided for on the face of the Purchase Order.

4.03 Packaging and Risk

The Deliverables will be suitably packed in such a manner as will ensure their safe transportation undamaged to their destination. The Deliverables will remain at the risk of the Supplier until the Deliverables are received by the Town.

4.04 Inspection and Acceptance

Receipt of the Deliverables at the Town's location does not constitute acceptance of the Deliverables by the Town. The Deliverables are subject to the Town's inspection and acceptance within a reasonable period of time after delivery. If any of the Deliverables, in the opinion of the Town, are inadequately provided or require corrections, the Supplier shall make the necessary corrections at its own expense as specified by the Town in a rectification notice.

4.05 Intellectual Property Rights

All intellectual property rights in and to each Deliverable will vest in the Town free and clear of all liens and encumbrances on receipt of payment by the Town for each Deliverable. To the extent that any Deliverables contain any intellectual property of the Supplier, the Supplier hereby grants the Town a worldwide, royalty-free, non-exclusive, perpetual license to use, copy, modify and distribute such intellectual property as part of the Deliverables. The Supplier shall provide the Town with all assistance reasonably requested by the Town to perfect the rights described herein, including obtaining all assignments and waivers of moral rights necessary or appropriate to vest the entire right, title and interest in the Deliverables in the Town and its successors and

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assigns.

4.06 Time

Time is of the essence for this Contract.

4.07 Permits, Licenses, Consents, Approvals

The Supplier shall obtain all applicable permits, licenses, consents and approvals required for the Supplier to provide the Deliverables in accordance with the Contract.

4.08 Waiver of Lien Rights

Upon receipt from the Town of amounts invoiced in accordance with Article 5, the Supplier waives and releases all rights to, and at its sole cost shall obtain the prompt removal of, any mechanics', repairer's, storer's, construction or other lien or encumbrance against the Town or its property which then exist or may thereafter arise in relation to the Contract or Deliverables.

Article 5 – Payment for Deliverables

5.01 Payment According to Contract Rates

The Town shall pay the Supplier for the Deliverables in accordance with the Rates within thirty (30) days of receipt by the Town of a satisfactory invoice from the Supplier requesting payment for Deliverables that have been received and accepted by the Town.

All invoices submitted by the Supplier must include:

- a. the amount invoiced, exclusive of HST;
- b. the amount of HST shown separately; and
- c. the HST number.

The Purchase Order number must appear on all documentation relating to the Contract, including, but not limited to, invoices and delivery/packing slips. Invoices that do not include the applicable Purchase Order number, item number and order description will not be processed, and will be returned to the Supplier until the appropriate information is provided.

5.02 Electronic Funds Transfer

The Town's preferred method of payment for Canadian Suppliers is by Electronic Funds Transfer (EFT) where the financial institution is physically located in Canada. The Supplier will be required to provide the Town with a Vendor EFT form, by return mail, email accountspayable@grimsby.ca or hand delivered.

It is the responsibility of the Supplier to ensure account information is correct and up to date. The Town is not liable for errors resulting from changes to EFT information provided by the Suppliers financial institution or from the Supplier. If an uncompleted or erroneous transfer occurs because the Suppliers EFT information was incorrect and the funds are no longer under the control of the Town payment process, the Town is deemed to have made the payment and the Supplier is responsible for recovery of any erroneously directed funds. If for any reason, the Town is unable to submit payment by EFT the Supplier agrees to accept a cheque or have payment delayed until such time as EFT process is functional.

5.03 Payments to US Vendors, European and other international vendors

The Town will pay US, European and other International Suppliers by cheque payment or wire transfer as determined by the Town in its sole discretion.

On every shipment originating outside of Canada, the Supplier shall furnish, in addition to its invoice, properly certified Canadian Customs invoices and Trade Agreement certificates in quadruplicate, made up in

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accordance with the Canadian Customs requirements.

Payments from non-Canadian suppliers shall be invoiced in Canadian dollars and the supplier is responsible for all customs and duties and freight but shall exclude Harmonized Sales Tax (HST).

5.04 No Expenses or Additional Charges

The Supplier shall pay all applicable taxes and duties, including excise taxes, incurred by or on the Supplier's behalf with respect to the Contract. There will be no charges payable by the Town to the Supplier other than the Rates.

5.05 Withholding of Payment

The Town may withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts and such withholding of disputed amounts will not constitute a breach of the Contract and the Supplier shall not charge any on interest on such amounts.

Article 6 – Insurance and Indemnification

6.01 Insurance

The Supplier hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Supplier would maintain, and listing the Town as an additional insured in the subject policy including, but not limited to, the following:

- a. commercial general liability insurance on an occurrence basis for third-party bodily injury, personal injury, and property damage, to an inclusive limit of not less than five million (\$5,000,000) per occurrence and including products and completed operations liability. The policy is to include the following:
 - the Town as an additional named insured with respect to liability arising in the course of performance of the Supplier's obligations under, or otherwise in connection with, the Contract;
 - contractual liability coverage;
 - cross-liability and severability of interests clause;
 - employers liability coverage ;
 - 30 day written notice of cancellation, termination, or material change;
 - tenants legal liability coverage (if applicable and with suitable sub-limits); and
 - non-owned automobile coverage with blanket contractual coverage for hired automobiles.

The Supplier shall provide the Town with evidence of insurance, upon request.

6.02 Workplace Safety and Insurance Board

The Supplier shall at all times be registered with the Workplace Safety and Insurance Board under the *Workplace Safety and Insurance Act, 1997*, S.O. 1997, c. 16, Schedule A, and shall maintain its accounts with the Workplace Safety and Insurance Board in good standing. Upon request by the Town, the Supplier shall provide the Town with evidence of such good standing.

6.03 Supplier Indemnity

The Supplier agrees to indemnify and save harmless the Indemnified Parties from all losses, claims, damages, actions, causes of action, proceedings, costs and expenses that the Indemnified Parties may sustain, incur, suffer or be put to at any time, either before or after this Contract ends, including, but not limited to the infringement of third-party intellectual property rights, environmental damage, or third party bodily injury

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(including death), personal injury and property damage, arising or occurring, directly or indirectly, by reason of any act or omission of the Supplier or its Related Entities, except to the extent that such liability arises out of the independent acts or omissions of the Indemnified Parties.

6.04 Limitation of Liability

In no event will the Town be liable to the Supplier or any other person for any indirect, incidental, consequential or punitive damages, including any lost profit, data, goodwill, or business opportunity for any matter relating to the Contract beyond the payment due to the Supplier for the Deliverables.

Article 7 – Termination

7.01 Immediate Termination of Contract

The Town may immediately terminate the Contract for any reason in the sole discretion of the Town upon giving written notice to the Supplier, notwithstanding that the Supplier might not be in default under the Contract, and in such event the Town shall be liable to the Supplier only for the payment of the Rates in respect of Deliverables accepted by the Town up to the date of termination. The express rights of termination in the Contract are in addition to and shall in no way limit any rights or remedies of the Town under the Contract, at law or in equity.

Upon such a termination notice being given by the Town, the Supplier shall immediately cease supplying Deliverables in accordance with and to the extent specified in the termination notice. The Town may, at any time or from time to time, give one or more additional termination notices with respect to any or all Deliverables or parts of Deliverables not terminated by any previous termination notice.

The Town, in its sole discretion, reserves the right to allow the Supplier to cure a defect or concern giving rise to the Town's decision to terminate. The conditions to be met by the Supplier to cure a defect shall be set out in writing by the Town and the form of the conditions are in the Town's sole discretion.