

PURCHASE ORDER - TERMS AND CONDITIONS

1. Incorporation of Terms and Conditions in Purchase Order

The term and conditions in this document are incorporated in every requisition for goods or services, or both, that the Manitoba Housing and Renewal Corporation ("Manitoba Housing") issues by purchase order. The promises, warranties and representations in this document are deemed to have been made by every recipient of a purchase order from Manitoba Housing that has been accepted in accordance with section 2 (the "Vendor").

2. Acceptance of Purchase Order

The purchase order is Manitoba Housing's offer to purchase from the Vendor the goods or services, or both, described in the purchase order.

Beginning to provide the services, shipment of any of the goods, or delivery of any of the goods, whichever occurs first, constitutes acceptance by the Vendor of Manitoba Housing's offer to purchase.

3. Entire Contract

The purchase order, together with these terms and conditions, forms the entire contract between Manitoba Housing and the Vendor (the "contract").

4. Promise to Perform

By accepting the Manitoba Housing's offer to purchase, the Vendor promises to supply all goods or services, including all required labour, material, plant or equipment, to the satisfaction of MANITOBA HOUSING by the dates specified in the purchase order.

5. Occupied MANITOBA HOUSING Projects or Units

Where goods are to be delivered to or installed, or services delivered in an occupied Manitoba Housing project or an occupied unit within a housing project, the Vendor will respect the rights of the tenants so living there and will conduct themselves in a professional and respectful manner.

6. Compliance with Applicable Laws, Regulations and Specifications

The Vendor, and the goods or services supplied under this purchase order, must comply with all applicable laws, by-laws, regulations, codes and standards. The Vendor must obtain all necessary permits at its own cost unless the purchase order specifies that Manitoba Housing will obtain them.

7. Shipping Instructions

The Vendor must comply with best commercial practices to ensure that the goods arrive safely at the destination, and all goods must be shipped freight prepaid, F.O.B. destination, unless otherwise stated.

8. Delivery

Time is of the essence, and the goods must be delivered or the services fully performed by the date or dates specified in the purchase order. No change in the scheduled delivery or performance dates will be permitted without Manitoba Housing's written consent. No acceptance of goods or services after the scheduled delivery or performance date constitutes a waiver by Manitoba Housing of any term or condition that requires the Vendor to deliver or perform at a future date.

9. Inspection and Testing

Goods

Manitoba Housing will count and inspect goods delivered under the purchase order. Manitoba Housing may also wish to test the goods requisitioned in a purchase order. If the count,

inspection or tests show that the goods do not comply with Manitoba Housing's specifications or other requirements, the goods will be rejected and returned to the Vendor.

Services

Manitoba Housing will inspect or review services delivered or performed under a contract. If the inspection or review shows that the services do not comply with Manitoba Housing's specifications or other requirements, the services will be rejected.

Costs Related to Rejected Goods or Services

All costs of Manitoba Housing to unpack, inspect, test, re-pack, store and re-ship rejected goods are the responsibility of the Vendor. All costs of Manitoba Housing to inspect or review rejected services are the responsibility of the Vendor. The Vendor agrees to promptly pay all such costs.

10. Risk

The goods and services remain at the risk of the Vendor until they have been satisfactorily counted, inspected, tested or reviewed by Manitoba Housing in accordance with section 10. The Vendor must replace, at its own expense, any and all goods or services damaged or destroyed by any cause whatsoever prior to Manitoba Housing having performed its count, inspection, testing or review.

11. Prices

Manitoba Housing will pay the prices stated in the purchase order for the goods or services. The prices indicated are deemed to be in Canadian funds unless otherwise specified in the purchase order or agreed to in writing by Manitoba Housing.

12. Handling and Related Charges

The prices quoted on the purchase order by the Vendor must include all charges for handling, packaging, wrapping, bags, containers, crating, storage, commissions and related matters unless otherwise agreed to in writing by Manitoba Housing.

13. Taxes

All applicable federal, provincial and municipal sales and excise taxes must be indicated on the purchase order.

The Vendor must provide Manitoba Housing with the GST registration number for its company or, if applicable, shall provide Manitoba Housing with a declaration indicating the Vendor's exemption status under the *Income Tax Act* (Canada).

If the Vendor is a mechanical or electrical contractor, the Vendor shall provide Manitoba Housing with the RST registration number for the Vendor's company, in accordance with *The Retail Sales Tax Act* (Manitoba).

14. Payment

Provided that the goods or services have been delivered or performed to Manitoba Housing's satisfaction in accordance with the contract, Manitoba Housing will remit payment to the Vendor within 30 days of submission and approval of an invoice, unless otherwise mutually agreed upon.

15. Owner's Manual

If available, the Vendor must supply an owner's manual or other instructions to Manitoba Housing for the installation, operation, maintenance and repair of the goods.

16. Warranties

The Vendor expressly warrants that all goods and services purchased under the contract conform to the purchase order and all applicable specifications and Canadian standards, are free from defects in material, workmanship and design, and are of a quality satisfactory to Manitoba

Housing taking into account how they are described in the purchase order. If the Vendor knows, either expressly or by implication, the particular purpose for which Manitoba Housing intends to use the goods or services, the Vendor warrants that such goods or services are fit for such purpose. The Vendor further warrants that the goods are wholly new in that they contain only new components and parts throughout, that the Vendor has good and warrantable title to the goods and that the goods will, upon delivery to Manitoba Housing, be free and clear of all liens, claims and encumbrances of every kind.

The Vendor warrants that Manitoba Housing's purchase, installation and use of goods or services provided by the Vendor under the contract will not result in any claim of infringement, or actual infringement, of any patent, trademark, copyright, franchise, moral or other intellectual property right.

The Vendor warrants that the goods and services supplied under the contract have been produced and supplied in compliance with all applicable federal, provincial (or state) and local or municipal laws, orders, rules and regulations.

If the goods have a manufacturer's warranty, Manitoba Housing will be entitled to the benefit of the warranty. The Vendor will provide Manitoba Housing with a copy of such warranty when it delivers the goods. The Vendor agrees to extend all warranties that it receives from its vendors to Manitoba Housing.

Goods that are not as warranted (whether or not apparent on initial inspection) may at any time within the warranty period specified in the purchase order or any applicable manufacturer's warranty, whichever period is longer, be returned at the Vendor's expense. Manitoba Housing, at its option, may require the Vendor either to replace such goods without charge, in which case the Vendor must pay all re-packing, transportation and handling charges both ways, or to refund the purchase price and any charges incurred by Manitoba Housing in connection with the purchase. In addition, Manitoba Housing may claim payment of damages for any loss that it may suffer as a result of the goods not being as warranted. The Vendor agrees to promptly pay all such amounts to Manitoba Housing.

17. Default and Remedies

The following constitute events of default by the Vendor:

- (a) subject to section 18, if the goods are not delivered or if the services are not fully performed by the date or dates specified in the purchase order;
- (b) if, in Manitoba Housing's opinion, any of the goods are defective;
- (c) if, in Manitoba Housing's opinion, any of the goods do not conform to the purchase order;
- (d) if, in Manitoba Housing's opinion, any services provided by the Vendor are unsatisfactory, inadequate or improperly performed;
- (e) if the Vendor is in breach of any of the terms and conditions of the contract;
- (f) if the Vendor becomes, or is about to become, bankrupt or insolvent, goes into receivership or takes the benefit of any law pertaining to bankrupt or insolvent debtors (it being understood that the appointment of a receiver, receiver/manager or trustee of property and assets of the Vendor is conclusive evidence of insolvency); or
- (g) where the Vendor is a corporation, a certificate or order is made or granted, or a resolution is passed, for the dissolution or winding-up of the Vendor, voluntarily or otherwise, or the Vendor is otherwise likely to lose its corporate status.

Upon an event of default occurring, Manitoba Housing may by written notice to the Vendor, and in addition to its other rights under the contract and without restricting any other remedies available, take one or more of the following actions:

- (h) cancel the whole or any part of the contract which is deemed to be termination for cause;
- (i) purchase the goods or services elsewhere and charge the Vendor for any loss incurred by Manitoba Housing;

- (j) demand repayment from the Vendor of all or part of the purchase price previously paid;
- (k) withhold part or all of any future payment to the Vendor.

18. Force Majeure

The Vendor is not liable for default or delay due to causes beyond the Vendor's reasonable control and without fault or negligence on the part of the Vendor. The Vendor must give Manitoba Housing prompt notice in writing when any such cause appears likely to delay delivery of goods or the performance of services and must take appropriate action to avoid or minimize such delay. If any such default or delay threatens to impair the Vendor's ability to meet delivery requirements for its goods or services, Manitoba Housing is entitled to cancel the portion or portions of the purchase order so affected, without any liability to the Vendor. Manitoba Housing is not liable for default or delay in performing its obligations due to causes beyond its reasonable control.

19. Indemnifications and Liability of Vendor

The Vendor indemnifies and holds Manitoba Housing, its officers, employees and agents, harmless from and against all claims, losses, expenses, damages, causes of actions and liabilities of every kind and nature, including (without limitation) legal fees on a solicitor and own client basis, arising from or out of

- (a) any breach of any of the Vendor's obligations or warranties;
- (b) any misrepresentation by the Vendor;
- (c) any other act or omission of the Vendor, its officers, employees, agents or subcontractors, howsoever caused, including claims or actions which may be made or instituted by persons who make purchases from Manitoba Housing or use products supplied by the Vendor;
- (d) the presence or activity of the Vendor's officers, employees, agents, contractors and subcontractors on Manitoba Housing's premises where the contract includes services or work to be done on Manitoba Housing's premises;
- (e) any builder's lien or claim in any way relating to work or services performed under the contract; or
- (f) a determination that the contract creates the relationship of employer and employee between Manitoba Housing and the Vendor, to the extent that such an indemnity is not prohibited by law.

The Vendor is solely responsible for any personal injury, or loss of life, of its officers, employees, agents, contractors or subcontractors experienced by such persons in the course of performing the work or services or in any other way related to the requirements of the contract except to the extent it was caused by the wrongful or negligent act of an employee of Manitoba Housing while acting within the scope of his or her employment. The Vendor is solely responsible for its officers, employees, agents, contractors and subcontractors while they are on Manitoba Housing's premises. The Vendor is solely responsible for any damage to, or loss of, its own property or property owned by Manitoba Housing or others caused in the course of the work or services being performed or in any other way related to the requirements of the contract except to the extent it was caused by the wrongful or negligent act of an employee of Manitoba Housing while acting within the scope of his or her employment.

20. Assignment

No part of the contract or any interest in the contract or any claim arising from the contract, may be transferred, assigned or subcontracted by the Vendor without the prior written consent of Manitoba Housing.

No assignment or transfer of the contract relieves the Vendor of any obligations under the contract, except to the extent they are properly performed by the Vendor's permitted assigns.

Manitoba Housing may transfer or assign the benefits of the contract in whole or in part, including the Vendor's warranties, without approval of the Vendor.

The contract is binding upon and enures to the benefit of the successors and assigns of Manitoba Housing and upon the successors and permitted assigns of the Vendor.

21. Services

Where the purchase order requires services to be performed, including goods to be installed, the following additional terms apply:

- (a) The Vendor must take precautions to protect all property and persons from damage or injury arising out of the performance of the Vendor's services.
- (b) All services must be performed in accordance with current, sound and generally accepted industry practices by qualified personnel, trained and experienced in the appropriate fields.
- (c) The Vendor must be registered and in good standing with the Workers Compensation Board.
- (d) The Vendor is an independent contractor and not an agent, employee or representative of Manitoba Housing. The Vendor must not hold itself out to be an agent, employee or representative of Manitoba Housing.
- (e) The Vendor must perform its services in accordance with the schedules and work programs established by Manitoba Housing and must fully cooperate with Manitoba Housing and others engaged in work on the project so that the work on the entire project may be performed most efficiently but always consistent with good practices. If conflicts arise between the Vendor's work schedule and those of others engaged to work on the project, Manitoba Housing may require the Vendor and those other parties to work according to a schedule determined by Manitoba Housing.
- (f) The Vendor must carry out its services so that the premises are at all times clean, orderly and free from debris. Upon completion of the services, the Vendor must remove all equipment and unused materials from the project, clean up all refuse and debris, and leave the work site clean, orderly and in good condition.
- (g) Whenever services are performed on Manitoba Housing's premises or on premises under Manitoba Housing's control, the Vendor must comply with all reasonable directions and requests of Manitoba Housing and with Manitoba Housing's work and safety rules, and must require its employees, agents, contractors and subcontractors to so comply. Manitoba Housing has the right to exclude personnel from Manitoba Housing's premises who do not comply with such directions, requests or rules and, at Manitoba Housing's option, to terminate the contract if the Vendor or its employees, agents, contractors or subcontractors fail to comply with this provision.

22. Delay or Suspension

By advising the Vendor in writing, Manitoba Housing may, at its sole option, from time to time, delay or suspend the delivery of goods or the provision of services under the contract, in whole or in part, for such period of time as may, in the opinion of Manitoba Housing, be necessary. Where there is such a delay or suspension by Manitoba Housing, all terms and conditions of the contract shall continue in full force and effect against the Vendor, except for scheduled performance or delivery dates which shall be postponed accordingly.

23. Severance

If a court or other lawful authority of competent jurisdiction declares any provision of the contract to be invalid, illegal or unenforceable, the contract continues in full force and effect with respect to all other provisions. All rights and remedies under such other provisions survive any such declaration.

24. Set-off or Deduction

All claims for money due or to become due from Manitoba Housing under the contract may be set off or reduced by Manitoba Housing for any counterclaim arising out of this transaction or for any other claim Manitoba Housing may have against the Vendor.

25. Advertising

The Vendor, and anyone on the Vendor's behalf, must not advertise or publish anything that includes a claim by the Vendor that it has supplied or provided goods or services to Manitoba Housing or to any of its staff members unless the Vendor has first obtained the written consent of Manitoba Housing.

26. Disclosure of Information

All data and information furnished by Manitoba Housing to the Vendor in connection with the contract, including, without limitation, data and information in the form of specifications, drawings, reprints, technical information, equipment, schedules, or other technical or business information, are the exclusive property of Manitoba Housing. Such data and information must be held in confidence by the Vendor, its employees, agents, contractors and subcontractors, and must be promptly returned to Manitoba Housing upon request by Manitoba Housing. The Vendor must ensure that all such data and information is kept confidential and that it is not disclosed to any other person, nor used for any purpose other than to provide the goods or services requisitioned in the purchase order, unless and until it comes into the public domain (other than by or through the Vendor) or Manitoba Housing consents in writing to its disclosure.

27. Modifying the Terms and Conditions

No modifications (whether they are deletions, additions or variations and whether they are proposed by Manitoba Housing or the Vendor) to the terms and conditions of the contract are effective or binding on Manitoba Housing unless they are specifically agreed to in writing by Manitoba Housing. No additional or different terms or conditions in any printed form of the Vendor become part of the contract unless Manitoba Housing has specifically agreed to them in writing.

28. No Substitutions

The Vendor must not substitute a different brand or model if a particular brand or model has been specified in the purchase order, unless the different brand or model has been specifically agreed to in writing by Manitoba Housing.

29. Survival of Obligations, Representations, Warranties and Indemnities

The obligations of the Vendor contained in section 26, as well as all representations, warranties and indemnifications made or given by the Vendor, survive the cancellation or termination of the contract, and the performance or completion by the Vendor of its obligations under the contract.

30. Applicable Laws

The contract must be interpreted, performed and enforced in accordance with the laws of Manitoba and of Canada (as applicable).

31. Conflict

If there is any conflict between the terms and conditions in this document and those set out in the purchase order, those in the purchase order prevail.