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**SCHEDULES**

**SCHEDULE GC27 – COMPANY PERFORMANCE REVIEW FORM**

**SCHEDULE GC30 – ACCESSIBLE CUSTOMER SERVICE TRAINING REQUIREMENTS**

**GC1 DEFINITIONS**

- 1.1 The following definitions shall apply to all Contract Documents and references to the masculine or singular throughout the Contract Documents shall be considered to include the feminine and the plural respectively, and vice versa as the context requires.
- 1.1.1 "ABCC" shall mean the City or an Agency, Board, Commission or Corporation of the City. Each ABCC has its own relationship with the City and administers important services to the residents of the City.
- 1.1.2 "Applicable Laws" shall mean the meaning as given in GC6.1.
- 1.1.3 "Approved Equal" shall mean a substitute approved in writing by the TTC's Representative for an item designated in the Specifications.
- 1.1.3 "Bid" shall mean the written offer of a Bidder to perform the Work.
- 1.1.4 "Bidder" shall mean the party submitting a Bid for the Work.
- 1.1.5 "TTC" shall mean the Toronto Transit Commission a body corporate pursuant to the City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, as amended.
- 1.1.6 "TTC's Representative" shall mean the duly authorized representative, designated from time to time by the TTC, to exercise such power, authority or discretion as is required under the Contract.
- 1.1.7 "Contract" shall mean the undertaking by the TTC and the Company to perform their respective duties, responsibilities and obligations as prescribed in the Contract Documents.
- 1.1.8 "Contract Amendment" shall mean a written instruction for an agreed final amount, issued by the TTC, to the Company for additions, deletions or other revisions to the Work as specified in the Contract Documents.
- 1.1.9 "Contract Completion" shall mean when the entire Work, except those items arising from the provisions of GC9 - WARRANTY, has been performed to the requirements of the Contract Documents and is so certified by the TTC's Representative.
- 1.1.10 "Contract Documents" shall mean the Contract Amendments, Purchase Order, Addenda, Supplementary Conditions, General Conditions, Specifications, Contract Drawings, Information Available To Bidders and the Company's Bid.
- 1.1.11 "Contract Drawings" or "Drawings" shall mean the drawings included in the Contract Documents, any supplementary or revised drawings furnished by the TTC's Representative and incorporated into the Contract and the shop drawings and other drawings submitted by the Company and reviewed by the TTC's Representative.

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- 1.1.12 "Contract Price" shall mean the price stipulated in the Notification of Award and/or Purchase Order which may be adjusted in accordance with the terms of the Contract.
- 1.1.13 "Contract Schedule" shall mean the most recent schedule indicating the timing of major activities of the Work submitted by the Company and approved in writing by the TTC's Representative.
- 1.1.14 "Company" shall mean the Bidder to whom the TTC has awarded the Work, its successors and/or assignees and is a party to the Contract.
- 1.1.15 "Good Industry Practice" shall mean using standards, practices, methods and procedures to a good commercial standard, conforming to Applicable Laws, and exercising that degree of skill and care, diligence, prudence, and foresight which would reasonably and ordinarily be expected from a qualified, skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.
- 1.1.16 "F.O.B." shall mean the point at which title to the Work passes from the Company to the TTC.
- 1.1.17 "Milestone" shall mean any specified event, date or time by which a defined scope of Work shall be completed, including Contract Completion.
- 1.1.18 "Notification of Award" shall mean the written notification by the TTC accepting the Bid of a Bidder for the Work.
- 1.1.19 "Parent Company" shall mean a company that controls a subsidiary company as defined by the Ontario Business Corporations Act, R.S.O. 1990, Chapter B.16 and amendments thereto.
- 1.1.12 "Permits, Licences and Approvals" shall mean all permissions, consents, approvals, certificates, permits, licences, agreements and authorizations to be obtained by the Company in accordance with this Contract and as required by Applicable Laws, including any associated fees.
- 1.1.21 "Products" shall mean materials, machinery, equipment and/or fixtures forming the Work.
- 1.1.22 "Purchase Order" shall mean the document issued by the TTC, confirming or acting as the Notification of Award and documenting the purchase of the Work of the Contract at a stated price or price formula upon the terms and conditions as stated in the Contract Documents.
- 1.1.23 "RFB" shall mean the Request for Bids documents to which the Bidder submitted a Bid.
- 1.1.24 "Site" shall mean the destination to which the Work is delivered to.

- 1.1.25 "Specifications" shall mean written descriptions or instructions pertaining to the performance of the Work under the Contract, including but not limited to the qualitative and quantitative requirements for Products, standards, services, processes and workmanship.
- 1.1.26 "Subcontractor" shall mean the individual, firm, partnership, or corporation having a direct contract with the Company to perform a part or parts of the Work including the supply of Products worked to a special design according to the Contract Documents.
- 1.1.27 "Work" or "Works" shall mean the design, manufacture, fabrication, supply and/or related services, required by the Contract Documents.
- 1.1.28 "Worker" shall mean any individual that the Company or a Subcontractor employs, contracts with or assigns to perform Work.

## **GC2 CONTRACT DOCUMENTS**

- 2.1 The documents constituting the Contract Documents are complementary to each other and any matter or thing included in any of such documents shall be considered to be included in all.
- 2.2 In the event of any inconsistency or conflict, the Contract Documents shall be interpreted in accordance with the following order of precedence:
- 2.2.1 Contract Amendments;
  - 2.2.2 Purchase Order;
  - 2.2.3 Notification of Award;
  - 2.2.4 Supplementary Conditions;
  - 2.2.5 General Conditions;
  - 2.2.6 Specifications;
  - 2.2.7 Contract Drawings, if applicable;
    - 2.2.7.1 drawings of larger scale shall govern over those of smaller scale;
    - 2.2.7.2 figured dimensions shown on Contract Drawings shall govern over scaled dimensions;
  - 2.2.8 Information Available To Bidders, if applicable;
  - 2.2.9 Company's Bid.
- 2.3 Documents of a later date shall govern over like documents.

**GC3 LANGUAGE OF THE CONTRACT**

- 3.1 Communications between the Company and the TTC shall be in the English language and said communication shall include, but not be limited to, all documents, notes on drawings and submissions required under the Contract.

**GC4 INTENT OF THE CONTRACT**

- 4.1 The intent of the Contract is for the Company to provide everything necessary for the proper performance and completion in every detail of the Work described or implied by the Contract Documents including all Contract Amendments.
- 4.2 The Company shall not assign, transfer, convey, sell or otherwise dispose of the whole or any part of the Contract without the written consent of the TTC.
- 4.3 Nothing contained in the Contract Documents shall imply or create any contractual relationship between any Subcontractor and the TTC.
- 4.4 The Company shall exercise its rights and perform its obligations at its own cost and risk without recourse to the TTC, except as otherwise provided in this Contract, in which case the Company's sole recourse with respect to the subject matter of this Contract shall be the TTC.

**GC5 ABCC**

- 5.1 The Company acknowledges and agrees that upon request from an ABCC to purchase against the Contract (either through the same Purchase Order or through a separate purchase order), the Company shall provide the goods/services to the ABCC at the same pricing and terms and conditions as set out in the Contract.
- 5.2 The TTC reserves the right to add or delete any ABCC and/or additional delivery locations during the term of the Contract.
- 5.3 A listing of current ABCC's may be found on the City's website: [www.toronto.ca/abcc](http://www.toronto.ca/abcc).

**GC6 LAWS TO BE OBSERVED**

- 6.1 In the performance of the Work, the Company shall observe and comply with the statutes and regulations of the Government of Canada and the Province of Ontario and with the by-laws of the cities or municipalities within which the Work is located, so far as the said statutes, regulations and by-laws affect the Work or control or limit the actions of persons engaged in the Work ("Applicable Laws").
- 6.2 Wherever a statute, regulation, by-law, standard, code or document or any part thereof is quoted in the Contract Documents, it shall be deemed to refer to the latest amendment or revision in effect on the date of the closing of the RFB and shall be a part of the Contract as if it had been written in full herein.
- 6.3 The Contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario and any action or proceeding brought by the Company to interpret or enforce the Contract shall be commenced in the Courts of Ontario and not elsewhere.

**GC7 TAXES AND DUTIES**

- 7.1 The Contract Price is inclusive of all applicable Canadian taxes and customs duties, either in force or announced prior to the RFB Closing Date, even if the effective date is subsequent to the RFB closing date, including but not limited to the Harmonized Sales Tax (HST).
- 7.2 If a change in the tax or duty payable is announced subsequent to the RFB closing date, any change in tax or duty payable will be to the account of the TTC. No additional costs for administration or overhead and profit will be allowed on such changes and the Company shall supply at no cost to the TTC, sufficient documentation to permit a determination of the resulting change.
- 7.3 Where an exemption or recovery of government sales tax, custom duties or excise taxes is applicable to the Contract, the Company shall provide the TTC where required, with all necessary cost information including original invoices and assistance, at no cost, to facilitate such exemption or recovery of taxes and duties to the credit of the TTC.

**GC8 PERMITS**

- 8.1 The Company shall apply for and obtain in its own name, Permits, Licences and Approvals and shall pay fees and give notices necessary and incidental to the due and lawful performance of the Work, in accordance with the Specifications.

**GC9 WARRANTY**

- 9.1 The Company shall promptly correct at its own expense any defect or deficiency in the workmanship or material which appears within a period of one year from the date of delivery of the Work to the TTC or such longer period as may be specified for certain Products or Work as set out in the Specifications or other Contract Documents. Neither testing, inspection, payment or acceptance of the Work by the TTC's Representative shall relieve the Company of this responsibility.
- 9.2 Upon receiving notice of a defect or deficiency, the Company shall immediately correct, within forty-eight hours or some other reasonable time agreed to with the TTC's Representative and at the Company's own expense, all Work found defective, deficient or unable to meet the design, performance and operation criteria set out in the Contract. The Company shall also correct, at its own expense any damage to other work resulting from any corrections required under this general condition. If the Company after such notification shall delay or default in making good the Work, then the TTC's Representative may arrange to correct the defect and the Company shall be liable for all costs, changes and expenses in connection therewith. New Warranty periods shall commence upon the completion of the remedied Work.
- 9.3 If, as determined by the TTC's Representative, the Company is not expedient in correcting defective Work or Work not performed in accordance with the Contract Documents, then the TTC may deduct from the monies otherwise due to the Company, the difference in value as determined by the TTC's Representative between the Work as performed and that which is called for by the Contract Documents.

## GC10 PROPRIETARY RIGHTS

- 10.1 If any design, device, process or material covered by a letters patent or trade mark, copyright, industrial design, trade secrets or other forms of intellectual property, is provided by the Company under the Contract, the Company shall indemnify, defend and save the TTC harmless from any action or claim arising out of the infringement or alleged infringement of any valid or allegedly valid patent, trademark, copyright, industrial design, trade secret or other forms of intellectual property and shall indemnify the TTC for any cost, expense and damages which it may suffer or be obliged to pay by reason of such action or claim.
- 10.2 The Company shall pay royalties and patent fees required for the performance of the Contract.
- 10.3 Any drawings, documents, technical data, methods, processes, tooling, and inventions; whether conceived, or developed and produced during the course of the Contract specifically for the purposes of completing the Contract, shall be the property of the TTC, who shall have sole exclusive rights for subsequent use of same, except as may otherwise be granted by the TTC.
- 10.4 The TTC has the right, within the scope of the Contract and for the sole purpose of operating, maintaining and subsequently modifying the Work, to use, duplicate, or disclose internally within the TTC, the technical data and the information conveyed therein, in whole or in part, and to have or permit others to do so, as set out below:
  - 10.4.1 Manuals or instructional materials prepared for installation, operating, maintenance or training purposes;
  - 10.4.2 Technical data pertaining to items, components or processes which were prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements;
  - 10.4.3 Other technical data which has been or is normally furnished without restriction by the Company or Subcontractors;
  - 10.4.4 In the event that the Company and/or its Subcontractors require an agreement prior to providing confidential technical data to the TTC, then the TTC will enter into a non-disclosure agreement acceptable to said parties to ensure delivery of confidential technical data pursuant to the Contract Documents;
  - 10.4.5 Other specifically described technical data, which the parties agree will be furnished without restriction.
- 10.5 No such copyrighted matter, shall be included in technical data furnished hereunder unless the written permission of the copyright owner has been obtained by the Company for use by the TTC in the manner herein described.
- 10.6 The Company shall report to the TTC promptly and in written detail each notice or claim of copyright infringement received by the Company with respect to any technical data delivered hereunder.



**GC11 AUTHORITY OF THE TTC'S REPRESENTATIVE**

- 11.1 The TTC's Representative shall represent the TTC upon issuance of the Notification of Award until completion of the Contract and shall have authority to act on behalf of the TTC to the extent provided in the Contract Documents. The TTC's instructions to the Company shall be forwarded through the TTC's Representative.
- 11.2 The TTC's Representative shall decide questions which arise relating to the performance of the Work, the rate of progress, the quality and acceptability of Products furnished, the interpretation of the Contract Documents and the mutual rights as between the Company and other contractors working on the Site.
- 11.3 The TTC's Representative has the authority to reject Work which, in the TTC's Representative's opinion, does not conform to the Contract Documents and to require special inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. Neither the TTC's Representative's authority to act nor decisions made to exercise or not to exercise such authority in accordance with the Contract shall give rise to any duty or responsibility of the TTC's Representative to the Company or its Subcontractors.
- 11.4 The TTC's Representative will prepare and issue, if appropriate, Contract Amendments in accordance with GC21 - CHANGES IN THE WORK and GC22 - VALUATION OF CHANGES IN THE WORK.
- 11.5 The TTC's Representative may for cause, direct any part of the Work to be commenced and/or completed in priority to any other part of the Work.

**GC12 INSPECTION AND TESTING OF THE WORK**

- 12.1 The TTC's Representative shall, at all times, be provided access to the Work. Work to be done under the Contract shall be done to the satisfaction of the TTC's Representative who has the discretionary authority to reject Work which, in the TTC's Representative's opinion, does not conform to the requirements of the Contract Documents. Defects and deficiencies shall be corrected by the Milestone date(s) or as mutually agreed upon between the TTC's Representative and the Company.
- 12.2 If the Work is designated for special tests, inspection or approvals in the Contract Documents or by the TTC's Representative's instructions or by the applicable statutes, regulations and by-laws, the Company shall give the TTC's Representative timely notice regarding such inspections. Inspections by the TTC's Representative will be made promptly. The Company shall arrange for inspections by other applicable authorities and shall give the TTC's Representative timely notice of such inspections.
- 12.3 If the Company fails to provide timely notice to the TTC's Representative of any special tests, inspections or approvals required by the Contract Documents, it shall be required to repeat such tests or inspections at its expense if directed by the TTC's Representative.
- 12.4 Any part or parts of the Work may be specially examined for compliance with the Contract Documents if so ordered by the TTC's Representative. If, upon examination, such Work is found not to be in accordance with the Contract Documents, the Company shall correct such Work and

pay the cost of examination and correction. If such Work is found to be in accordance with the Contract Documents, the TTC will pay the cost of examination and reinstatement.

### **GC13 SUSPENSION OF THE WORK**

- 13.1 The TTC shall have the right at any time for cause or convenience to suspend further performance of all or any portion of the Work at any stage of undertaking by notice in writing to the Company. On the date of such notice the Company shall discontinue all Work as instructed whether being performed by itself or its subsuppliers and shall serve and protect all Work in progress and completed Work.
- 13.2 The Company shall be reimbursed for that portion of the Work satisfactorily performed or complete to the date of the notice. The TTC shall not be liable for any other costs arising from such notice including but not limited to loss of anticipated profits or loss of opportunity.

### **GC14 DEFAULT BY THE COMPANY**

- 14.1 If, in the opinion of the TTC's Representative, the Company by its own acts, omissions or neglect or that of any of its Subcontractors, or Product suppliers, fails to comply with the provisions of the Contract, delays the Work, or causes expense to the TTC or to any other parties under contract to the TTC, then the TTC's Representative may notify the Company in writing that the Company is in default of its contractual obligations and instruct it to correct the default within three calendar days immediately following receipt of such notice.
- 14.2 If the default cannot be corrected within the three calendar days specified, the Company shall be in compliance with the TTC's Representative's instructions if it commences the correction of the default within such specified time and provides the TTC with a schedule acceptable to the TTC's Representative for such correction and completes the correction in accordance with such schedule.
- 14.3 If the Company fails to correct the default within the time specified or subsequently agreed upon, the TTC without prejudice to any right or remedy it may have under GC16 - TERMINATION FOR DEFAULT, or any other provision of the Contract, may correct such default.
- 14.4 If the TTC or any other party under contract to it, suffers any expense caused by the acts, omissions or neglect as indicated above in GC14.1, then the TTC shall have the right to deduct the value of such expenses, notwithstanding the correction of the default within the time specified or subsequently agreed upon.

### **GC15 DELAY BY THE TTC**

- 15.1 If the Company is delayed in the performance of the Work by any act, omission or neglect of the TTC, then an extension of time shall be granted as the TTC's Representative decides, after consulting with the Company. If the TTC's Representative and the Company can not mutually agree to an extension of time, the TTC's Representative at his/her sole discretion shall determine the length of the delay and grant an extension of time accordingly. The Company shall be entitled to compensation for any associated additional costs that the TTC's Representative may determine to be occasioned as a result of such delay.

- 15.2 No extension of time or payment of compensation shall be granted unless the Company, within seven (7) calendar days after the delay, submits to the TTC's Representative in writing its notice of delay. The notice of delay shall state the nature of the delay, its cause, the portions of the Work affected thereby, and the dates when such portions of the Work became so affected. The notice shall provide the anticipated direct impact of the delay

#### **GC16 TERMINATION FOR DEFAULT**

- 16.1 The Company shall be in default of the Contract and the TTC may terminate the Contract if the Company:
- 16.1.1 Suspends the whole or any part of the Work without cause before completion;
  - 16.1.2 Fails or refuses to proceed with the Work with due diligence or fails or refuses to maintain the Contract Schedule;
  - 16.1.3 Ceases or threatens to cease to carry on its business, or if there occurs, at any time, an act or event of bankruptcy or insolvency of the Company (as defined or provided for in any applicable statute), or if any proceedings, voluntary or involuntary, by or against the Company under any statute or statutory provisions relating to bankruptcy, insolvency, liquidation, arrangement, re-organization or dissolution are commenced, or if the Company makes any proposal under the Bankruptcy Act or if the Company or the property or assets of the Company become subject to the Winding Up Act, or if any application is made with respect to the Company under the Companies' Creditors Arrangement Act or under similar legislation, or if any order shall be made or a resolution passed for the winding up, liquidation or dissolution of the Company or if any receiver, receiver and manager, trustee, liquidator or similar official is appointed for the property or assets of the Company;
  - 16.1.4 Continually or repeatedly refuses or fails to supply sufficient skilled workers, or Products, plant or equipment of the proper quality or quantity;
  - 16.1.5 Fails to make payments promptly to suppliers or Subcontractors for materials, Products and labour;
  - 16.1.6 Disregards or fails to comply with statutes, regulations, by-laws or the instructions of the TTC's Representative;
  - 16.1.7 Continually or repeatedly refuses or fails without cause to perform this Contract in strict accordance with the Contract Documents.
- 16.2 In the event that the Company is in default of this Contract as outlined herein, the TTC's Representative may serve written notice upon the Company specifying the default and instructing the Company to remedy such default.
- 16.3 If the default continues for three calendar days after the date of serving the said notice of default, the TTC may serve upon the Company and its surety, if applicable, written notice of its intention to terminate the Contract.

- 16.4 If the default continues for three calendar days after the date of serving the said notice of intention to terminate the Contract, the TTC, upon issuance of written notice from the TTC's Representative that sufficient cause exists to justify such action and without prejudice to any other rights or remedies it has, may terminate the Contract and serve notice of termination upon the Company and its surety, if applicable.
- 16.5 If the TTC is required to complete the Work, the Company shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the reasonable cost of completing the Work and any damages incurred by reason of the Company's default, including liquidated damages and the cost for warranty items, such excess shall be paid to the Company.
- 16.6 Notwithstanding anything to the contrary in this Contract, where the Company has been given three notices in accordance with GC16.2, for the same default as listed in GC16.1.1 to GC16.1.5 (inclusive), the TTC may immediately terminate this Contract by serving a notice of termination upon the Company (and its surety, if applicable) regardless of whether the Company has previously rectified any default(s).
- 16.7 If such reasonable cost of completing the Work including damages exceeds the Contract Price, then the Company and its surety, if applicable, shall be liable to the TTC for any additional cost in completing the Work.
- 16.8 A Company that has been terminated for default, may at the TTC's sole discretion, be restricted from submitting bids on subsequent TTC procurements, for a period of time deemed appropriate by the TTC. The TTC shall also be under no obligation to accept any bid from a company with whom an officer or director of that company or with whom an individual associated with that company, including but not limited to an officer or director that has, in the past, been associated, in any way, with a company that has previously had a contract with the TTC that was terminated for default, for a period of time deemed appropriate by the TTC, as applicable.

#### **GC17 CONFLICT OF INTEREST**

- 17.1 For the purposes of the Contract, a "Conflict of Interest" includes but is not limited to any situation or circumstance where:
- .1 In relation to the Request for Bid (RFB) process, the Company has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to: (i) having or having access to information in the preparation of its Bid that is confidential to the City of Toronto, or the TTC, and not available to other bidders; (ii) communicating with any person with a view to influencing preferred treatment in the RFB process; or (iii) engaging in conduct that compromises or could be seen to compromise the integrity of the open and competitive RFB process and render that process non-competitive and unfair; or
  - .2 In relation to the performance of its contractual obligations in the Contract, the Company's other commitments, relationships or financial interests could or could be seen to: (i) exercise an improper influence over the objective, unbiased and impartial exercise of its independent judgement; or (ii) compromise, impair or be incompatible with the effective performance of its contractual obligations.

- 17.2 The Company shall:
- .1 avoid any Conflict of Interest in its contractual obligations;
  - .2 disclose to the TTC's Representative without delay any actual or potential Conflict of Interest that arises during the performance of its contractual obligations; and
  - .3 comply with any requirements prescribed by the TTC's Representative to resolve any Conflict of Interest.
- 17.3 The Company should declare that the Company and if applicable, each joint venture participant, has no pecuniary interest in the business of any third party or any connection or relationship with any such third party or employers or directors of such third party that would cause a Conflict of Interest or appear to cause a Conflict of Interest in carrying out the Work. Should any such interest, connection or relationship materialize during the life of the Contract, the Company shall declare it immediately to the TTC's Representative.
- 17.4 Company personnel must disclose to the TTC's Representative any relevant arrangements, contracts, alliances, connections or relationships so that their eligibility for a contract is based on all available information.
- 17.5 The issue of whether a 'Conflict of Interest' exists involving the Company shall be determined at the TTC's sole discretion.

#### **GC18 COMPANY'S RESPONSIBILITIES**

- 18.1 The Company shall have complete control of the Work and shall effectively direct and supervise the Work so as to ensure conformance with the Contract Documents. The Company shall be solely responsible for production means, methods, techniques, sequences and procedures and for co-ordinating the various parts of the Work and its delivery under this Contract.
- 18.2 The Company shall employ the services of a Professional Engineer, if required, to fulfil the requirements of the statutes and regulations pertaining to the Contract.
- 18.3 The Company shall adhere to the Contract Milestones, which includes delivery dates of the Work to the TTC, and the Company will provide written notification to the TTC's Representative forthwith of any potential or actual failure to adhere to a Milestone delivery date.
- 18.4 The Company shall be as fully responsible to the TTC for the acts and omissions of its Subcontractors, suppliers, agents, consultants and persons directly or indirectly employed by the Company as it is for its own acts or omissions.

#### **GC19 FORCE MAJEURE**

- 19.1 If the Company is delayed in the performance of the Work by acts of God, or public enemies, acts of governments, or foreign states, or fires, floods, epidemics, quarantine restrictions, strikes, lockouts or organizations of workers, or embargoes by transportation companies or public authorities, or by riots, insurrections, wars, pestilence, lightning, earthquakes, cyclones, or by other causes which the TTC's Representative determines to be wholly beyond the control of the parties, then an extension to any affected Milestones, which the TTC's Representative

determines is reasonably necessary, may be granted. The Company shall not be entitled to any additional compensation on account thereof. Precipitation, cold and hot weather, unseasonable or otherwise, will not be considered force majeure.

- 19.2 No extension of time shall be granted unless the Company, within fourteen calendar days after the delay is discovered, submits to the TTC's Representative in writing its notice of claim for extension of time stating the nature of delay, its causes, the portions of the Work affected thereby and the date when they become so affected.
- 19.3 If the TTC's Representative is satisfied that the delay of the Work occurred, and that it resulted from one or more of the causes described herein, the TTC's Representative shall issue a Contract Amendment, subject to receipt of the Company's documentation.

#### **GC20 ADVERTISING AND PUBLIC RELATIONS**

- 20.1 The TTC reserves the right to review and approve all public relations material and advertising related to the Contract prior to publication. The Company shall ensure that any material or advertising to be published is submitted in writing to the TTC's Representative for such approval. The TTC's Representative will provide a decision within twenty-one calendar days of receiving such request for approval.

#### **GC21 CHANGES IN THE WORK**

- 21.1 The TTC may make changes in the Work without invalidating the Contract, by altering, adding to or deducting from the Work.
- 21.2 No change in the Work shall be undertaken without an authorized Contract Amendment and no change in the Contract Price or in Milestones, shall be valid unless so ordered.
- 21.3 When a Contract Amendment is proposed, the Company shall present to the TTC's Representative for approval, its change in the Contract Price and in the Milestones, as applicable. The Company shall submit a detailed breakdown of the price of the proposed change giving quantities of labour, material and equipment and the unit prices for same along with substantiating documentation within ten (10) business days after the TTC's Representative has initiated the change request. The Company shall supply any additional information in support of the price submitted and/or change in Milestones that the TTC's Representative may request.

#### **GC22 VALUATION OF CHANGES IN THE WORK**

- 22.1 For changes which are to be performed on a time-and-material basis for professional services for design Work the Company shall develop all-inclusive hourly "Billing Rates" for each position classification that may be utilized on any design change Work. These "billing rates", if acceptable to and approved by the TTC's Representative, would be applied against the approved hours for the Contract Change Work related to design Work. No other mark-ups are applicable to the approved all-inclusive "Billing Rates". The approved "Billing Rates" shall be applicable throughout the term of the Contract, for Contract Change Work.
- 22.2 Changes, which are to be performed on a lump sum basis, shall be subject to negotiations between the TTC's Representative and the Company.

- 22.3 Changes for extra Work which are to be performed on a unit price basis, shall be in accordance with accepted "Unit Prices For Extra Work" contained in the Contract Documents or if there are no accepted "Unit Prices For Extra Work", using unit prices subsequently negotiated between the TTC's Representative and the Company.

### **GC23 SETTLEMENT OF DISPUTES**

- 23.1 If a claim or any other dispute arising between the TTC and the Company cannot be resolved to the satisfaction of both parties, then the parties may between themselves agree to submit the particular matter for binding arbitration in accordance with the provisions of the Arbitration Act of the Province of Ontario and amendments thereto.
- 23.2 The Company shall complete the Work, in accordance with the written instruction of the TTC's Representative, notwithstanding any dispute, arbitration or any legal action initiated by either or both of the parties.
- 23.3 Arbitration proceedings shall not take place until the completion or alleged completion of the Work except in a case where the parties agree that a matter in dispute is of such nature as to require immediate consideration while evidence is available.
- 23.4 No action or suit may be brought by the Company until after the final invoice has been processed by the TTC's Representative and that action or suit shall be only for the amount of any difference between the Company's account as submitted and the final invoice.

### **GC24 TERMINATION FOR CONVENIENCE**

- 24.1 Notwithstanding any other provisions relating to the TTC's rights to terminate this Contract, the TTC may, by written notice to the Company, terminate this Contract for its own convenience at any time if the TTC deems such action necessary or in the best interests of the TTC. The TTC's right to terminate the Contract for its convenience shall be absolute and unconditional and exercisable by the TTC in its sole discretion. Such notice of termination for convenience shall specify the date upon which such termination becomes effective. Upon receipt of such notice, the Company shall cease all operations, except as may be directed by the TTC's Representative to complete any unfinished portion of the Work.
- 24.2 The Company, upon receiving such notice of termination from the TTC, shall immediately carry out any instructions given and shall proceed with such work as instructed by the TTC's Representative in the notice of termination. Subject to any directions in the notice of termination, the Company shall immediately discontinue ordering Products related to the cancelled Work and shall make every reasonable effort to cancel existing orders and sub-contracts related to the Work, on the best terms available.
- 24.3 In the event the Contract is terminated for the convenience of the TTC pursuant to GC24.1, the Company shall only be entitled to payment of the following amounts:
- 24.3.1 In the event that no Work is performed and no Products have been purchased for this Contract by the Company prior to cancellation of the Contract, the costs incurred in submitting a Bid for the Contract, providing such costs can be proven.

- 24.3.2 That portion of the Contract Price relating to Work performed to the date of the notice of termination in accordance with the Contract Documents.
- 24.3.3 Cancellation costs (which costs shall not include loss of anticipated profit claims) reasonably incurred by the Company as the result of such termination provided the Company has substantiated such costs to the TTC's reasonable satisfaction after the TTC has reviewed the details thereof.
- 24.4 The Company's obligations as to quality, correction and warranty of any Work performed under this Contract shall continue in force, after such termination.
- 24.5 Once the total effect on the Contract of the said termination has been established, the change to the Contract shall be formalized by the issuance of a Contract Amendment, in accordance with GC21 - CHANGES IN THE WORK.
- 24.6 Except as described in this General Condition, the Company shall not be entitled to any additional reimbursement on account of any such termination including, without limitation, incidental, special, consequential or other damages, notwithstanding any other provision of the Contract Documents.

#### **GC25 RECORDS AND AUDIT**

- 25.1 The TTC may inspect and audit the books, payrolls, account and records of the Company at any time as deemed necessary by the TTC prior to Contract Completion and thereafter for a period of two years, to verify the Company's valuations of Contract Amendments, cancelled Work and claims, and the Company shall supply certified copies of the books, payrolls, accounts and any other records to the TTC or access to same as required by the TTC.
- 25.2 In the case of the Company's neglect or failure to observe fully and faithfully the provision of documentation to validate such Contract Amendments, cancelled Work and claims, the Company shall forfeit all right to payment there for, which it otherwise might have had and shall not make any claim in respect thereof; and if made, the TTC may reject the same as invalid, and the Company shall not have any right of recovery in respect thereof at law or otherwise, unless written consent of the TTC's Representative to the making of such a claim is obtained.
- 25.3 Should an audit disclose any overbilling on the part of the Company, the Company shall be responsible to repay to the TTC all monies owed by the Company as a result of the overbilling or the TTC at its discretion may deduct the overbilling from monies owed to the Company. Further the TTC shall have the right at its sole discretion to restrict the Company, from submitting a bid on future TTC Bid Requests, for a period of time deemed appropriate by the TTC.

#### **GC26 SEVERABILITY**

- 26.1 Any condition, section, subsection or other subdivision of this Contract or any other provision of this Contract which is, or becomes, illegal, invalid or unenforceable, shall be severed from this Contract and be ineffective to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof.

#### **GC27 COMPANY WORK PERFORMANCE RATING**



- 27.1 The TTC shall during the term of a Contract, maintain a record of the performance of the Company completing Work for the TTC. This information may be used to complete a "Company Performance Review" report, a copy of which will be forwarded to the Company upon Contract Completion. Refer to Schedule GC27 attached to these General Conditions (Section 00 72 00) for the format of this report. Interim "Company Performance Review" reports may be issued, as deemed appropriate by the TTC's Representative, at any time during the term of the Contract.
- 27.2 The overall history of the Company in performing work for the TTC will be considered in the evaluation of future bids from the Company.
- 27.3 The TTC reserves the right in future bid requests to reject any bid submitted by a company with an unsatisfactory performance history with the TTC.
- 27.4 Non-compliance with Contract requirements will be identified to the Company.
- 27.5 The information contained in the "Company Performance Review" may be provided to the City of Toronto and the TTC and such performance reviews may be relied upon by the City of Toronto and/or the TTC to disqualify a company from providing a bid on any further request by either entity.

#### **GC28 PROHIBITION AGAINST GRATUITIES**

- 28.1 No Company and no employee, agent or representative of the Company, may offer or give any gratuity in the form of entertainment, participation in social events, gifts or otherwise to any member of the City of Toronto Council or Board Member of the TTC, or any officer or employee of the TTC in connection with or arising from this Contract, whether for the purpose of securing a future contract or seeking favourable treatment in respect to this Contract.
- 28.2 If the TTC determines that GC28.1 has been breached by or with respect to the Company, the TTC may preclude the Company from bidding future TTC work and may terminate this Contract without incurring any liability.

#### **GC29 SET-OFF**

- 29.1 The TTC shall have the right to satisfy any amount from time to time owing by it to the Company by way of a set-off against any amount from time to time owing by the Company to the TTC, including but not limited to any amount owing to the TTC pursuant to the Company's indemnification of the TTC and the TTC's right to collect applicable liquidated damages.

#### **GC30 ACCESSIBLE CUSTOMER SERVICE TRAINING REQUIREMENTS**

- 30.1 The Company will be responsible to provide all Company staff with accessible customer service training and shall keep records of such training and make such records available to the TTC's Representative or other appropriate authorities on request, all in accordance with Schedule GC30, attached to these General Conditions. For the purposes of Schedule GC30, Contractor shall mean Company.

#### **GC31 DELIVERY AND SHIPPING INSTRUCTIONS**

- 31.1 The Company shall be responsible for ensuring that Products are properly packaged and delivered in good condition to the required delivery point in accordance with the Contract Documents.
- 31.1.1 Pallets used by the Company to deliver Products to the TTC shall be constructed in such a manner to safely support the Product(s) contained thereon and be designed in such a manner to allow for the pallet to be safely transported by a forklift. The pallet shall be made of a suitable durable material that can accommodate the combined weight of the pallet and the Product(s) contained thereon. The pallet, including the manner in which the Product(s) are placed thereon, shall provide for a stable load when transported and while at rest. The TTC will determine, in its sole discretion, the acceptability of the pallet with respect to its construction and general suitability for the Product(s) contained thereon, load stability, safe transport by forklift and storage. Block style pallets, or other pallets that the TTC, in its sole discretion, deems to be unsuitable for transport by forklift or unable to safely support the Product(s) contained thereon are not acceptable.
- 31.1.2 The TTC reserves right, at its sole discretion, to reject shipments, or portions of shipments, that are not delivered to the TTC in accordance with the pallet requirements set out in Subsection 31.1.1 above. The Company shall be responsible for all costs and expense associated with the rejected shipments.
- 31.2 The Purchase Order number, as applicable, must be clearly marked on all packages, boxes, bills of lading, packing slips and any correspondence relating to the Contract. Packing slips must accompany all shipments. If shipments packaged in more than one container do not have the packing slip attached to the outside of the container, then the container with the packing slip must be clearly marked to indicate that fact. The packing slip must indicate the total number of packages, boxes, skids, etc. included with the shipment.
- 31.3 For shipments originating from outside of Canada, Canada Customs requires three (3) copies of the Customs Invoice which must show the goods value, freight cost and the gross weight of each shipment and this weight must agree exactly with the weight shown on the waybill, also the complete routing must be shown on all Customs Invoices. If applicable, the Company shall provide a NAFTA certificate of origin for free trade purposes, in duplicate, for shipments originating in the United States or Mexico, which shall be included with the shipping documents and the invoices. All costs incurred by the TTC as a result of the Company's failure to provide a certificate of origin will be the responsibility of the Company and may be deducted from any money due to the Company by the TTC.
- 31.3.1 The Company accepts all responsibility for the information provided on the NAFTA certificate of origin, letter or affidavits. By signing these documents, the Company accepts all responsibility relating to that information and hereby warrants that the information provided is complete and accurate. The Company also agrees to indemnify and hold the TTC harmless from any liabilities resulting from providing inaccurate information or failure to comply with NAFTA requirements.
- 31.3.2 Seven (7) calendar days prior to shipment of Products to the Site the Company shall advise the TTC's Representative of the predicted date of arrival of the Products to the Site, the name of the company transporting the shipment.

- 31.3.3 The TTC's customs broker, DSV Sea & Air shall clear the shipment at the border. The Company shall notify the TTC's Representative, at least ten (10) business days prior to the Products arriving at the border and shall fax all shipping documentation to the TTC's Tax Analyst at (416) 488-4708 at least two (2) business days prior to the equipment arriving at the border. The Company shall contact the TTC's DSV Sea & Air representative at phone number; 905-262-5078 Ext. 2601 or by E-mail at ttc-road@ca.dsv.com, to arrange for freight pick-up and customs clearance and shall provide the TTC Purchase Order number to the TTC's broker. A valid NAFTA certificate of origin must be supplied with the invoice and packing slip and attached to the shipment of Products.
- 31.3.4 Failure to provide all of the above information may delay payment of invoices or may be cause for the invoice to be returned for additional information.

### GC32 INDEMNIFICATION

- 32.1 The Company shall hereby assume the defense of, fully indemnify and hold harmless the TTC, its Engineer, consultants, agents and employees in respect of the amount of any claim, demand, loss, cost, expense (including reasonable legal expenses), action, suit, proceeding, liability, fine, penalty, interest, payment or damage by whomsoever (including, without limitation, the TTC) which is made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any breach of the Contract by the Company, or to any willful misconduct, fault, or negligent act or omission of the Company or any person, agent, consultant, firm or corporation for whose acts the Company is liable at law (collectively referred to as "Claims"). Further, the Company shall pay any amount of Claims incurred by the TTC on account of any injuries, including death, or damages, or destruction of property, including TTC's property, received or sustained by any persons or property and if it fails to do so, the TTC may pay such Claims and deduct the amount thereof from any monies due, or to become due, to the Company, or otherwise recover such amounts or any balance thereof from the Company.
- 32.2 Subject to any Supplementary Condition with respect to the payment of liquidated damages, if applicable, neither party shall be liable to the other party for any consequential damages, including, but not limited to, claims for loss of profit or reputation.
- 32.3 Notwithstanding anything to the contrary contained in the Contract, the Company's liability to the TTC will not exceed the greater of \$1,000,000.00 in Canadian funds or the amount payable by the TTC under the Contract ("Limitation on Indemnity") for the Work as set forth herein provided, however, this Limitation on Indemnity will not apply to:
- i) any obligation of the Company to indemnify the TTC based on claims of third parties on account of personal injury or property damage;
  - ii) to the amount of applicable liquidated damages available to the TTC hereunder;
  - iii) any liability related to the Company's gross negligence or willful misconduct; and
  - iv) any injury to TTC's Representatives, consultants, agents, employees or TTC's property to the extent caused by the gross negligence or willful misconduct of the Company or its agents.

### GC33 INVOICING

33.1 Invoices shall be submitted in the currency as stated on the TTC Purchase Order and shall detail the following in a form acceptable to the TTC:

.1 General Requirements:

- the TTC Purchase Order number and applicable line item number, or Contract number as applicable;
- the Work period covered by the invoice
- the calendar date and corresponding location for each separate item of Work performed/delivered
- the quantity of units of Work performed during the Work period covered by the invoice
- the itemized unit price rates, applicable discounts, for each item of Work performed (as listed in the Price Schedule contained in the Contract Documents, or as agreed via any Contract Amendment);
- applicable Harmonized Sales Tax (HST) shall be shown separately on the invoice;
- the Company's HST registration number, if applicable;
- the name of the TTC Representative requesting each item of Work

.2 Documentation for invoice: the Company shall:

- Ensure it can provide evidence which can substantiate invoices including, but not limited to, TTC's request for such Work, actual time sheets, waybills, expense receipts, completions/units delivered to TTC, etc. as applicable; and
- Upon request by the TTC's Representative, deliver said evidence, in a format considered acceptable to the TTC's Representative in his/her sole discretion, forthwith and at no cost to the TTC.

33.2 Invoices in duplicate shall be forwarded to the following address on the same day the Products are dispatched to the TTC:

Toronto Transit Commission  
1900 Yonge Street  
Toronto, Ontario  
M4S 1Z2  
Attention: (Supervisor Accounts Payable)

### GC34 TERMS OF PAYMENT

34.1 Payments for Work performed shall be made within 30 calendar days following delivery of the Work and receipt by the TTC of an acceptable invoice submitted in accordance with GC33 - INVOICING. (In the event the 30th day falls on a weekend or public holiday, payment will be made the next business day thereafter.) Payment shall be issued in the form of a cheque.

34.2 Payment under the terms of the Contract shall not constitute acceptance of the Work nor relieve the Company from any of the responsibilities or obligations under the Contract.

**GC35 FOREIGN EXCHANGE ADJUSTMENT**

- 35.1 If the Company had clearly stated in its Bid that certain prices are subject to adjustment for variation in the foreign exchange rate for a foreign currency, then during the Contract the amounts for such adjustment shall be determined as follows:

For each payment invoice, multiply the percentage difference between the base currency exchange rate stated in the Company's Bid and the Bank of Canada's nominal noon exchange rate for the date the Product(s) is scheduled for delivery to the TTC (i.e. Milestone date), by the Canadian dollar amount, per invoice, that is subject to adjustment. The amount of adjustment (whether increase or decrease) shall be shown as a separate line item in each invoice along with the appropriate details of the adjustment calculation, and will be for the account of the TTC.

**GC36 SELLING PRODUCTS TO TTC EMPLOYEES**

- 36.1 If the Company sells or otherwise offers any Product, as defined in the Contract Documents, or any other goods or services to a TTC employee (or any other person who may be working on TTC property) for their personal or other use, the Company is not permitted to deliver such Products, goods or services, to any TTC property/location.

**GC37 NON-RESIDENT WITHHOLDING TAXES**

- 37.1 Certain payments to non-resident corporations or individuals may be subject to withholding taxes, under the Income Tax Act. Non-residents can apply in advance to Revenue Canada, Taxation for a waiver or reduction of the withholding tax requirement. Unless the TTC is provided with a copy of the written information of the result of the waiver application to the Tax Services Office of Canada Customs and Revenue Agency, taxes will be withheld as determined under the Income Tax Act.

- 37.2 If a Company wishes to apply for a waiver it should contact:

Canada Customs and Revenue Agency  
Non Resident Withholding Tax Department  
1 Front Street West, Suite 100  
Toronto, Ontario, Canada  
M5J 2X6

Attention: Collections Officer (416) 954-0545, FAX No. (416) 954-8528

- 37.3 The Company should follow the instructions and documentation requirements for making an application for a waiver on the Regulation 105 withholding tax, including submission of the form "REGULATION 105 WAIVER APPLICATION" (R105-WA), latest version and required supporting documentation.

END OF SECTION