



## Purchase Order General Conditions of Contract for the Supply of Goods and Services

**1. General:** All additions and alterations to these General Conditions shall be in writing and attached as Special Conditions to the Purchase Order and Contract. In the event of any inconsistency between these General Conditions and any Special Conditions, the latter shall prevail.

**2. Price Basis:** The Purchase Order and Contract Price is firm subject to any other Special Conditions. Prices shall include customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery (Free-in-Store), insurance, Goods and Services Tax where the Contractor is registered for GST, and any other applicable costs and charges.

The Contractor shall issue Waverley Council with a valid tax invoice in accordance with a *New Tax System (Goods and Services Tax) Act 1999, (the GST Act)*.

**3. Payment of Accounts:** Council standard terms of payment are 30 days from the date of acceptance of the Goods and Services and receipt of a correctly rendered and dated invoice. This may be varied where council accepts a discount offered by the Contractor for earlier payment.

**4. Performance of the Contract:** The Contractor shall deliver the Goods and provide the Services at the time and place specified in the Purchase Order and Contract. The Contractor shall ensure that the Goods and Services comply with all of the General Conditions of Contract and Special Conditions of Contract. Variations to the Purchase Order and Contract must be in writing.

**Goods.** All Goods shall be new and comply with the highest relevant commercially accepted standards and be fit for purpose unless varied by a Special Condition.

Council may reject, within a reasonable time, Goods that are faulty or do not fully comply with this Purchase Order and Contract. The Contractor shall make good or replace these Goods at no additional cost, including removal and incidental costs, within the time specified by council.

**Services.** The Contractor warrants that it will render the Services with due skill and care, and that materials supplied in connection with the Services will be fit for purpose.

If there is a defect in performance of the Services or they are incomplete, council may, by notice, require the Contractor to remedy the defect in performance, complete the Services, or re-do the Services at no additional cost to council. The Contractor has 30 days from the date of the notice to comply.

**5. Termination:** Council may terminate the Contract in whole or in part when the Contractor: has not remedied a breach within the time specified in the notice of breach; becomes bankrupt or insolvent; or is unable to complete the contract.

**6. Warranties:** The warranty commences on the day of delivery or acceptance of the Goods and Services, whichever occurs last. It shall be valid for 90 days, or the length of the Contractor's or Manufacturer's standard warranty period, whichever is longer. The conditions and the period for completing warranty work that apply are the same as for the remedial work in Clause 4.

**7. Inspection and Source Quality Assurance:** To meet council requirements to verify compliance with the specified QA type, a council Representative may perform:

Quality audits and quality surveillance as defined in ANZ/ISO 8402 of the quality system and/or the production processes; and/or

Product inspections as defined in AS1199 of the completed Goods and Services before acceptance.

The Contractor shall provide the authorized council representatives with full and free access to; its premises and work areas, and all documentation appropriate to check compliance with this Purchase Order and Contract.

**8. Assignment/Subcontracting:** The Contractor must obtain the prior written approval of council to assign or subcontract the Purchase Order and Contract or any part thereof. Approval to assign or subcontract shall not relieve the Contractor from any of its obligations under the Purchase Order and Contract, or impose any liability upon council to an assignee or a subcontractor.

**9. Title, Acceptance and Risk:** Title to the Goods vests in council on acceptance by council. The risk of any loss or damage to the Goods remains with the Contractor until delivery to or acceptance by council whichever is the later.

**10. Notices:** All notices, requests, variations, and other communications by both parties are to be in writing and delivered promptly to the appropriate addresses named in the Purchase Order and Contract.

**11. Existing Contracts and Standing Offers:** Where this Purchase Order and Contract is issued under the terms of a Standing Offer or to extend the terms of an existing contract, the terms of that Standing Offer or existing contract shall prevail. Special Conditions, where utilized, shall take precedence over both the terms of the Standing Offer and an existing Contract.

**12. Indemnity:** The Contractor agrees that it shall at all times indemnify and hold harmless council its officers, employees, and agents (those indemnified) against all losses and additional expenses including legal costs and expenses on a solicitor/own client basis, and liabilities reasonably incurred or suffered by those indemnified, caused by any willful, unlawful, or negligent act or omission of the Contractor, its officers, employees, agents, or subcontractors in connection with this Purchase Order and Contract and which arises from any claim, suit, demand, action, or proceeding by any person. The Contractor's duty of indemnity to council under this Clause shall be reduced proportionately to the extent that any willful, unlawful, or negligent act or omission of council, its officers, employees or agents contributed to the loss or liability.

**13. Waiver:** Failure by either party to enforce a provision of the Purchase Order and Contract shall not be construed as in any way affecting the enforceability in any other instance, or the enforceability of the Purchase Order and Contract as a whole.

**14. Applicable Law:** The Contract shall be governed by NSW Law and all disputes which may arise relating to or arising out of the Contract shall be submitted to arbitration in Sydney.

**15. Patents, trademarks, Copyrights and Registered Designs:** Sellers warrant that the subject of the Contract does not infringe any patent, Trademark, copyright or Registered Design and undertake to indemnify the Buyers against all damages, losses or cost suffered by them in respect of any claim made under any patent, Trademark, Copyright and Registered Design. Should a Buyer receive notice of any claim that the subject of the Contract infringes on any Patents, Trademarks, Copyrights and Registered Designs, the Buyers shall have the right to cancel the Contract.

**16. Intellectual Property:**

- Subject to clause b) below, neither Party assigns any of its existing Intellectual property rights to the other Party by the Supply or receipt of any goods or services under the Agreement.
- The Supplier agrees that all Intellectual Property created in the course of supplying the goods or services to the Council shall vest in and remain the property of the Council.
- Any goods made or work completed according to Council designs, or developed for the Council, or any designs supplied (or copies thereof); shall be held by the Supplier on behalf of the Council and at the disposal of the Council.

**17. Insurance:** The contractor must take out and maintain Workers Compensation Insurance Policy in respect of its employees. The contractor is to submit a Subcontractor's Statement and a current copy of the insurance policy prior to commencing any works. Failure to submit this documentation may result in cancellation of the contract.

Where the Contractor is providing goods & services to the Council, the Contractor must take out and maintain Public Liability Insurance for at least \$20,000,000.00 covering the Council and the Contractor against all claims of loss or injury arising from the delivery of the good or the performance of the services by the contractor, its subcontractor, employees or agents. The contractor agrees to have the Council endorsed as a named insurer under the public liability insurance policy.

**18. Environmental Consideration:** Council is committed to local environment controls and safeguards to protect the built and natural environment. The contractor will be required to effect adequate controls in accordance with statutory requirements to ensure protection of the environment.

**19. Risk Management and Work Health & Safety:** The contractor must comply with the applicable provision of the Work Health and Safety Act 2011 (NSW) and Protection of the Environment Operations Act 1997 (NSW) to ensure the health and safety of its employees, contractors or other personnel and the environment related to the good or service.

**20. Contractors Registration and Approval:** Council uses systems to maintain a listing of all Contractors engaged. Contractors **maybe** required to be registered and approved on the system prior to works commencing for council.

**INSTRUCTIONS AND CONDITIONS SET OUT IN THIS PURCHASE ORDER MUST BE OBSERVED, OTHERWISE THE PURCHASE ORDER MAY BE CANCELLED.**

**GENERAL DELIVERY REQUIREMENTS**

Suitable, adequate recycled packaging is to be used for each material and all materials to be received in good condition.

Last Review 24/06/2018