

**1. General:**

- a) The acceptance of a Purchase Order issued by Council or the supply of Goods or Services by the Contractor to Council pursuant to a Purchase Order (whichever occurs first) constitutes acceptance of these General Conditions by the Contractor unless the Contractor advises to the contrary in writing.
- b) All additions and alterations to these General Conditions shall be in writing and attached as special conditions to the Purchase Order (**Special Conditions**). In the event of any inconsistency between these General Conditions and any Special Conditions, the latter shall prevail.

**2. Price Basis:**

- a) The price set out in the Purchase Order is firm subject to any other Special Conditions and includes all costs (including customs duty unless specifically exempt), packaging, marking, handling, freight and delivery, insurance, taxes (including Goods and Services Tax (**GST**) where the Contractor is registered for GST), and any other applicable costs and charges.
- b) The Contractor must only submit a tax invoice once all Goods and Services that are the subject of the invoice have been delivered.
- c) All invoices issued by the Contractor to Council must be a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999*.
- d) If the Contractor is deemed as an employee for superannuation purposes under section 12 of the *Superannuation Guarantee (Administration) Act 1992* (Cth), Council will pay the Contractor's superannuation directly to the Contractor's nominated superannuation account. In these circumstances, the payment of superannuation contributions does not create an employment relationship. If superannuation is payable, the price set out in the Purchase Order is inclusive of superannuation.

**3. Payment of Accounts**

- a) Council's standard terms of payment are 30 days from the date of receipt of a correctly rendered and dated invoice. This may be varied where Council accepts a discount offered by the Contractor for earlier payment.
- b) Payment does not constitute an acceptance by Council that the Goods and Services have been provided in accordance with the terms of the Purchase Order.

**4. Timing and delivery**

- a) The Contractor must deliver the Goods and provide the Services at the time and place specified in the Purchase Order and in accordance with all other General Conditions in the Purchase Order, including any Special Conditions.

**5. Goods**

- a) All Goods must be new and comply with the specification or description in the Purchase Order and the highest relevant commercially accepted standards and be fit for purpose unless varied by a Special Condition.
- b) Council may reject, within a reasonable time, Goods that are defective or do not fully comply with this Purchase Order. The Contractor shall promptly repair the defect or replace these Goods at no additional cost to Council or, should the Contractor be unable to repair or replace the Goods within a reasonable time, refund Council any amount paid for the defective Goods.
- c) If Council rejects any defective Goods which have already been installed, the Contractor must, at its own cost, remove the defective Goods and make good any damage to other property occasioned by such removal, unless the Council installed the Goods despite a defect which was already apparent to Council at the time, in which case removal and make good will be at Council's own cost.
- d) In the event that the Contractor fails to repair or replace rejected defective Goods within a reasonable time, Council may have the repair or replacement undertaken by a third party (or itself) and all resulting costs and expenses will be a debt due to Council by the Contractor.
- e) If requested by Council within a reasonable time after delivery of the Goods, the Contractor must provide reasonable evidence that the Goods are in accordance with this Purchase Order.
- f) Goods are deemed to have been accepted by Council upon the later of:
  - i. the passage of a reasonable time for Council to inspect the evidence after a request made in accordance with clause 5.e); or
  - ii. if no request has been made in accordance with clause 5.e), the passage of a reasonable time for Council to inspect the Goods after delivery.
- g) Goods must be transported in suitable, adequate packaging and the Contractor must use its best endeavours to use recyclable packaging.
- h) If the Goods are lost or damaged in transit, the Contractor must replace them at the Contractor's own cost.
- i) The Contractor must transport and store all hazardous materials and dangerous Goods in accordance with all applicable laws and Australian Standards. The Supplier must provide Council with the relevant materials safety data sheet for all hazardous materials and dangerous Goods before delivery.
- j) The Goods must be accompanied by all relevant manufacturer and supplier instructions and the Contractor must use its best endeavours to assign all relevant manufacturer and supplier warranties to Council.

**6. Services**

- a) The Contractor warrants that it will render the Services in a timely and efficient manner with due skill and care, and that materials supplied in connection with the Services will be fit for purpose.
- b) 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, if the defect cannot be remedied,

re-do the Services at no additional cost to Council. The Contractor has 30 days from the date of the notice to comply.

- c) In the event that the Contractor fails to remedy the defect or complete or re-do the Services within 30 days from Council's notice pursuant to clause 6.b), Council may have the Services performed by a third party (or itself) and all resulting costs and expenses will be a debt due to Council from the Contractor.

**7. Termination:**

- a) Council may terminate the Purchase Order in whole or in part if the Contractor becomes bankrupt or insolvent; or is unable to complete the contract.
- b) If a party breaches an essential term of this Purchase Order, the other party may give notice requiring the breach to be remedied within seven days. If it is not remedied, the party giving the notice may terminate this Purchase Order.

**8. Warranties:**

- a) The Contractor warrants to Council that the Goods and Services:
  - i. comply with the specification or description in the Purchase Order and conform with all specifications, drawings, samples or other descriptions furnished by Council to the Contractor;
  - ii. are fit for the purpose for which they are intended;
  - iii. are of a high quality and free from any defects in design, manufacturing, materials and workmanship;
  - iv. comply with all applicable Australian Standards and legislation; and
  - v. are free of all liens, securities and encumbrances.
- b) The Contractor warrants and represents to Council that:
  - i. it has unencumbered title to all Goods to be supplied under the Purchase Order and its supply of the Goods to Council will not infringe the rights of any third party;
  - ii. it holds and will maintain all necessary licences, permits and authorities to perform the Purchase Order;
  - iii. it will remain fully responsible for all Services and all information created or developed or required to be created or developed under the Purchase Order, irrespective of any review or acceptance of those Services or information by Council; and
  - iv. it is not insolvent within the meaning of s 95A of the *Corporations Act 2001* (Cth).

**9. Inspection and Source Quality Assurance:**

The Contractor must maintain a quality management system equivalent to ANZ/ISO 9000 or higher.

- a) Council may perform:
  - i. quality audits and quality surveillance as defined in ANZ/ISO 9000 of the Contractor's quality system and/or production processes; and
  - ii. product inspections as defined in AS1199 of the completed Goods and Services before acceptance.
- b) The Contractor shall provide Council's authorised representatives with reasonable access to its premises and work areas during business hours and all documentation reasonably necessary to enable Council to check the Contractor's compliance with this Purchase Order.

**10. Assignment/Subcontracting:**

- a) Each party must obtain the prior written approval of the other party before assigning the Purchase Order or any part thereof.
- b) The Contractor must not subcontract any part of the Goods or Services without the prior written approval of Council. Approval by Council shall not relieve the Contractor from the performance of any of its obligations under the Purchase Order or impose any liability upon Council to a subcontractor.

**11. Title, Acceptance and Risk**

- a) Title to the Goods vests in Council on delivery of the Goods to Council. The risk of any loss or damage to the Goods remains with the Contractor until delivery to Council has been completed.
- b) The Contractor must take out and maintain all necessary insurance to insure the Goods against loss or damage until title passes in accordance with this clause 11.

**12. Notices:** All notices by both parties under this Purchase Order are to be in writing and delivered to the appropriate addresses named in the Purchase Order.

**13. Existing Contracts and Standing Offers:** Where this Purchase Order 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.

**14. Indemnity:** The Contractor agrees that it shall at all times indemnify and hold harmless Council and its officers, employees, and agents (**Those Indemnified**) against all losses, additional expenses including legal costs and expenses on a solicitor/own client basis, and liabilities incurred or suffered by those indemnified, caused by any wilful misconduct or unlawful or negligent act or omission of the Contractor or its officers, employees, agents, or subcontractors in connection with this Purchase Order. The Contractor's duty of indemnity to Council under this Clause shall be reduced proportionately to the extent that any act or omission of Those Indemnified contributed to the loss, expense or liability.

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

**16. Applicable Law:** The Contract shall be governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts with jurisdiction in NSW and courts having appeal from them.

**17. Intellectual Property:**

- a) The Contractor warrants that Council's use of the Goods and Services supplied under the Purchase Order will not infringe any patent, trademark, copyright, registered design or other intellectual property right (Intellectual Property Right) or moral right and indemnifies Council against all damages or losses suffered by Council in respect of any claim that Council's use of the Goods and Services infringes a n Intellectual Property Right (Intellectual Property Claim) or moral right. Should Council receive notice of any Intellectual Property Claim or moral right claim Council is entitled to terminate the Purchase Order immediately by notice in writing to the Contractor. This clause survives termination or expiry of this Purchase Order.
- b) Subject to clause c) 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.
- c) The Supplier agrees that all Intellectual Property Rights created in the course of supplying the Goods or Services to the Council shall vest in and remain the property of the Council.

**18. Insurance:**

- a) The Contractor must take out and maintain a workers compensation insurance policy in respect of its employees. If requested by Council the Contractor is to submit a certificate of currency prior to commencing any work under the Purchase Order
- b) Failure to submit this documentation in accordance with clause 18.a) entitles Council to terminate the Purchase Order.
- c) The Contractor must take out and maintain public liability insurance with a limit of at least \$20,000,000.00 per claim. The Contractor agrees to use its best endeavours have the Council endorsed as a named insured under the public liability insurance policy.
- d) In addition to the requirements in clauses 18.a) and 18.c) above, the Contractor must also hold and maintain any other insurance to cover the risk for the Goods and Service under this Purchase Order that a competent and prudent supplier of such Goods and Services would be expected to hold, which may include product liability, motor vehicle and professional indemnity insurance, and provide a certificate of currency for such insurances upon reasonable request by Council.

**19. Environmental Consideration:** Council is committed to local environment controls and safeguards to protect the built and natural environment. The contractor must effect adequate controls in accordance with statutory requirements to ensure protection of the environment, including the *Protection of the Environment Operations Act 1997* (NSW).

**20. Risk Management and Work Health & Safety:** The contractor must comply with the applicable provisions of the *Work Health and Safety Act 2011* (NSW) and ensure the health and safety of its employees, contractors or other personnel and members of the public in supplying the Goods or providing the Services.

**21. Contractors Registration and Approval:** Council uses systems to maintain a listing of all Contractors engaged. If requested by Council, the Contractor must provide all information reasonably necessary to be registered and approved on Council's system prior to supplying Goods or providing Services under the Purchase Order.

**22. Modern Slavery Act**

- a) The Contractor must take reasonable steps (appropriate to its size and circumstance) to identify, assess and address modern slavery risks within its operations and supply chains used in the provision of the Goods and Services.
- b) If at any time the Contractor becomes aware of modern slavery practices in the operations and supply chains used in the performance of the Purchase Order, the Contractor must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- c) Where the Contractor is required to comply with the Modern Slavery Act 2018 (Commonwealth), a Modern Slavery Statement must be prepared and forwarded to the Council for each reporting period (as defined under the Modern Slavery Act 2018 (Cth)) that falls under the duration of this Contract.

**23. Dispute Resolution:**

- a) A party claiming that a dispute has arisen out of or in relation to the Purchase Order must give a notice in writing to the other party setting out the nature of the dispute and the parties must use their reasonable endeavours to resolve the dispute.
- b) If the dispute has not been resolved within fourteen (14) days after service of written notice of the dispute, the dispute must be referred to mediation in accordance with the Australian Dispute Centre mediation guidelines.
- c) If the dispute has not been resolved by the mediation within 40 business days after service of written notice of the dispute, either party may commence court or arbitration proceedings as the case may be.

**24. Miscellaneous provisions**

- a) In these General Conditions, if a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these General Conditions, but the rest of this Purchase Order is not affected.
- b) Neither party shall be liable for any failure to fulfil or any delay in fulfilling any obligation arising from this Purchase Order if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, fire or explosion or any other cause beyond the reasonable control of that party and not a consequence of that party's negligence.
- c) Each party and its personnel must keep confidential all information received or learned in the course of performing the Purchase Order and belonging to the other party which is reasonably regarded as confidential by the other party. This obligation continues indefinitely beyond the end of the Purchase Order.
- d) Despite the above clause 24.c), the Contractor acknowledges that Council may be required to publish information concerning this Purchase Order in accordance with the Government Information (Public Access) Act 2009 (NSW) or any similar or replacement legislation or any order by the Auditor-General or Parliament.

**25. Definitions:** In these General Conditions:

- a) **Contractor** means the person, body or legal entity to whom the Purchase Order is addressed;
- b) **Goods** means the Goods stated in the Purchase Order;
- c) **Services** means any Services stated in the Purchase Order or which are incidental to, or required for, the supply of the Goods by the Contractor; and

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