

PURCHASE ORDER GENERAL CONDITIONS

1. Introductory Issues - Definitions

In this Contract, the following terms have the meanings indicated, unless inconsistent with the context:

"Commencement Date" means the date specified as such in the Specification or as agreed between Council and the Supplier.

"Contract" means the contract evidenced by the Contract Documents.

"Contract Documents" means the Specification, the Supplier's Quotation, this Purchase Order and these Purchase Order General Conditions.

"Delivery Point" means the location or address to which the Goods are to be delivered, as specified in this Purchase Order.

"Goods", "Services" or "Works" means the delivery of goods, the provision of services or the performance of works and all other things required to be done under this Contract by the Supplier, as indicated in the Contract Documents and includes any matters reasonably to be inferred from the Contract Documents.

"Overdue Amount" means an amount (or part thereof) that:

- (a) is not, or is no longer, disputed;
- (b) is due and owing under a tax invoice properly rendered by the Supplier in accordance with this Contract; and

which has been outstanding for more than 30 days from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

"Purchase Price" means, for Goods, the sum ascertained by multiplying the unit price by the number of units delivered (unit multiplication) or, for Services or Works, the fixed price (fixed) or any combination of both (unit multiplication and fixed), as submitted in the Supplier's Quotation.

"Specification" means Council's requirements in writing, sent to the Supplier by email or otherwise, outlining the required Goods, Services and/or Works and conditions of delivery/performance.

"Supplier's Quotation" means the Supplier's response in writing to Council's Specification which must include a Purchase Price.

"Time for Delivery" means the date and, where relevant, the time specified in the Specification (or such other date or time as may be agreed in writing) by or on which delivery of the Goods must be effected by the Supplier.

2. This Contract prevails

By submitting a quotation (the Supplier's Quotation) the Supplier agrees that this Contract prevails over any claimed contrary conditions submitted by the Supplier in connection with the Supplier's Quotation or at any other time unless such contrary conditions have been accepted by the Council as evidenced by an authorised signature on the contrary conditions.

3. Supply of Goods, Provision of Services, Performance of Works

The Supplier must supply the Goods, provide the Services and/or perform the Works (whichever is applicable) to the Council in accordance with this Contract.

4. Invoicing and payment

- (a) The Supplier must submit to the Council a tax invoice for the Purchase Price following the supply of the Goods, provision of the Services and/or Works which contains the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as the Council may reasonably require. The tax invoice must be sent to the address specified in this Purchase Order.
- (b) The Council will pay the invoiced amount within 30 days of receipt of an accurate invoice or such other time as is agreed in writing by the parties. However, if the Council disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute.
- (c) Payment of an invoice is not to be taken as evidence that the Goods have been supplied, the Services provided and/or Works performed in accordance with this Contract but must be taken only as payment on account.
- (d) The Council will, on demand by the Supplier, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under the *Penalty Interest Rates Act 1983* (Vic).

5. General Warranties

The Supplier warrants to the Council that:

- (a) it is entitled to use and deal with any intellectual property rights which may be used by it in connection with the Goods, Services and/or Works;
- (b) it and its employees, agents and sub-contractors do not hold any

office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Contract;

- (c) where the Council has, either expressly or by implication, made known to the Supplier any particular purpose for which the Goods, Services and/or Works are required, the Goods, Services and/or Works will be performed by the Supplier in such a way as to achieve that result; and
- (e) the Supplier will obtain for the Council the benefit of any manufacturer's warranties.

6. Liability

The Supplier must indemnify the Council and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a direct result of any failure to perform in accordance with this Contract or any other breach of this Contract.

7. Intellectual Property Rights

The Supplier grants to the Council a non-exclusive, perpetual, royalty-free licence to use any intellectual property rights in relation to any Goods supplied, Services provided or Works performed to the extent necessary to allow the Council the full use and enjoyment of those Goods, Services and/or Works and the Supplier must, upon request by the Council, do all things as may be necessary (including executing any documents) to give full effect to such rights.

8. Default by Supplier

- (a) If the Supplier defaults in the performance or observance of any obligation it has under this Contract, the Council may give notice to the Supplier specifying the default and requiring that such default be remedied within 14 days.
- (b) If, within 14 days after receipt of the notice, the Supplier fails to remedy the default, to the satisfaction of the Council, the Council (without prejudice to any other rights that it may have under this Contract or at common law against the Supplier) may:
 - (i) suspend payment under this Contract; or
 - (ii) terminate this Contract and any other Contract between the parties.

9. Insolvency of Supplier

If the Supplier -

- (a) being a person, commits any act of bankruptcy; or
 - (b) being a company, commits any act of insolvency -
- then the Council may terminate this Contract immediately.

10. Termination for convenience

The Council may, at any time, by giving written notice to the Supplier, terminate this Contract and the Supplier must on receipt of such notice immediately cease all work in connection with the this Contract and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event the Council will pay the reasonable fees and expenses of the Supplier in accordance with this Contract but not any loss of prospective profits. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had the Contract been completed.

11. Variation of this Contract

The Council may at any time give written notice to the Supplier proposing a variation to the quantity of the Goods or nature of the Services or Works. The Supplier must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply for the provision of the varied Goods, Services and/or Works. The Council may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance this Contract will continue as if no proposal under this clause had been made.

12. No Relationship

Nothing in this Contract will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Contract will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

13. Insurance

- (a) The Supplier must obtain and maintain insurance cover at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with this Contract. This may include product liability insurance to the value of the Contract (where applicable), public liability insurance with a minimum coverage of \$20 million per occurrence (where applicable) and professional indemnity insurance with a minimum coverage of \$10 million per occurrence (where applicable). Product liability insurance must match any warranty

period or 3 years after acceptance of the Goods, whichever is the greater. Any professional indemnity insurance must have a run off coverage period as agreed in writing by the parties.

- (b) On request, the Supplier must provide the Council with evidence of the currency of any insurance it is required to obtain.

14. Access

When entering the premises of the Council, the Supplier must ensure that its employees, agents and sub-Suppliers use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner and comply with the safety standards and policies of the Council (as notified to the Supplier).

15. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations under this Contract without the prior written consent of the Council (which may be given or withheld in its absolute discretion).
- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Contract and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

16. Compliance with Law

The Supplier must, in fulfilling its obligations under this Contract, comply with all Laws and with the lawful requirements or applicable policy of any governmental agency or Department.

17. GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Contract are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Contract, the recipient of the taxable supply must pay to the Supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.

18. General

- (a) This Contract is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the nonexclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the Supplier's performance of all its obligations under this Contract.

SPECIFIC CONDITIONS RELATING TO GOODS

19. Delivery

The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery. Delivery will not be taken to have occurred until delivery is acknowledged in writing by the Council or is deemed to occur under clause 20 (a).

20. Acceptance or rejection of Goods

- (a) If the Goods conform with the Specification or sample, the Council will promptly accept the Goods in writing. If the Goods do not conform, the Council may reject the Goods within 30 days by written notice giving reasons. If the Council does not accept or reject the Goods within 30 days of delivery, delivery will be deemed to have then occurred.
- (b) The Supplier must, at its cost, collect and remove any Goods that have been rejected as soon as practicable or the Council may return the Goods to the Supplier at the Supplier's expense.

21. Invoicing and payment

- (a) The Unit Price is fixed and includes all packaging, transport, insurance, loading, unloading and storage costs and any other costs incurred by the Supplier.

22. Title and risk

Title in the Goods will pass to the Council upon payment for the Goods. Risk in the Goods will pass to the Council when the Goods are delivered to the Delivery Point.

23. Further warranties in relation to Goods

Where this Purchase Order relates to Goods the Supplier further warrants that:

- (a) it has the right to sell and transfer title to and property in the Goods to the Council;
- (b) the Goods:

- (i) are new and fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
- (ii) conform in all respects with the Specification;
- (iii) are free from defects (including defects in installation);
- (iv) are free from any charge, lien or security interest; and
- (v) are of merchantable quality and comply with all Laws.

SPECIFIC CONDITIONS RELATING TO SERVICES

24. Equipment for the provision of Services

The Supplier must provide any and all equipment (including computer hardware and software and any ancillary support) necessary for the performance of the Services.

25. Further warranties in relation to Services

Where this Purchase Order relates to Services the Supplier further warrants that the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices.

SPECIFIC CONDITIONS RELATING TO WORKS

26. Defects liability

The defects liability period for any Works is 12 months. The Supplier must, before the end of any defects liability period, make good any defects in the Works at its own cost. Should the Supplier not make good any defects prior to the defects liability period Council may, at its option, engage other suppliers to make good the Works and claim the amount owing from the Supplier as moneys due and payable or set off such debt against any security held.

27. Precondition to payment

It is a precondition of payment under clause 4 that the Supplier prove it has fully paid all workers and sub-contractors engaged to perform the Works. Council has the right, at any time, to suspend payment where the Supplier is unable to supply proof that all workers and sub-contractors have been fully paid under this Contract.

28. Discrepancy, error or fault in the Contract Documents

The Supplier must immediately notify, and seek instructions from, Council should it become aware of any discrepancies, errors or faults in the Contract Documents. Council must provide instructions in writing to the Supplier which removes discrepancies, errors or faults brought to its attention by the Supplier within 5 days.