

Terms and Conditions for Purchase of Goods and Works

TO BE READ IN CONJUNCTION WITH AN OFFICIAL PURCHASE ORDER ISSUED BY THE COUNCIL

Please Note that these terms and conditions do not apply if a contract/agreement has been executed with Council in respect to the services being provided in which case you will continue to be bound by those terms and conditions.

1. DEFINITIONS

In this agreement:

- 1.1 **Confidential Information** means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement, but excludes any or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.
- 1.2 **Intellectual Property** means all rights conferred by statute, common law or equity in relation to patents, inventions, registered and unregistered designs, registered and unregistered trade marks, trade names, logos and get up, confidential information, copyright and moral rights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 1.3 **Purchase Order** means any official Purchase Order issued by the Council.
- 1.4 **Terms and Conditions** means these Terms and Conditions.
- 1.5 **Works** means any works and services specified in the Purchase Order together with any additional works necessary for the performance of this agreement.
- 1.6 Expressions used in the Purchase Order have the same meaning in these Terms and Conditions.

2. INTERPRETATION

In this document, unless the context otherwise requires:

- 2.1 a reference to this **agreement** means the Purchase Order and the Terms and Conditions;
- 2.2 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 2.3 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 2.4 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- 2.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 2.6 a provision is not construed against a party only because that party drafted it;
- 2.7 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement; and
- 2.8 the meaning of general words is not limited by specific examples introduced by ‘including’, ‘for example’ or similar expressions.

3. APPLICATION

This agreement:

- 3.1 applies to all Works performed by the Contractor to the Council and the Contractor is deemed to have read and agreed to this agreement prior to filling any order for the Works; and
- 3.2 prevails over the Contractor’s terms and conditions of sale or any other documents provided by the Contractor.

4. SUPPLY

The Contractor agrees to supply the Works and the Council agrees to purchase the Works on the terms of this agreement.

5. DELIVERY OF GOODS (GOODS ONLY)

- 5.1 The Supplier must deliver the Goods on or before the Delivery Date.
- 5.2 Unless otherwise specified in this agreement, “**delivery**” occurs as soon as the Goods are:
 - 5.2.1 off-loaded at the delivery address specified in the Purchase Order; and
 - 5.2.2 inspected by the Council and accepted as being in accordance with this agreement.
- 5.3 Title to and property in the Goods passes to the Council on delivery of the Goods.
- 5.4 Risk in the Goods passes on delivery of the Goods.
- 5.5 No liability to pay for any Goods arises until delivery.

6. PAYMENT

Unless otherwise specified in the Payment Terms, the Council must pay the price specified in the Purchase Order by cheque or electronic funds transfer within 30 days of the end of the month in which the invoice is issued by the Contractor. The invoice cannot be issued until the Works have been completed by the Contractor.

7. SERVICE STANDARDS (WORKS ONLY)

The Contractor must:

- 7.1 perform the Works in a professional and competent manner with due care, skill and diligence and within the time specified in the Purchase Order;

- 7.2 comply fully and promptly at its own cost with all laws, applicable standards, codes of practice, by-laws, orders and regulations at present or in the future relating to the performance of the Works and with all requirements, notices or orders in respect of anything affected by the Works;
- 7.3 provide at its own cost all supervision, labour, materials plant, tools and equipment, transport and temporary works required for the performance of the Works;
- 7.4 be responsible for the care of the Works from the date of commencement until completion, including the care, storage and protection of unfixed items and items provided by the Council (if any); and
- 7.5 provide, erect and maintain all barricades, fences, signs, lighting and temporary works necessary for the protection of the Works, other property and for the safety and convenience of the public.

8. **WARRANTIES BY SUPPLIER/CONTRACTOR**

- 8.1 The Supplier/Contractor warrants that the Goods/Works will:
 - 8.1.1 be of good merchantable quality and fit for their purpose;
 - 8.1.2 be performed using new materials, unless otherwise notified in writing by the Supplier/Contractor;
 - 8.1.3 conform with the description and the Specifications in the Purchase Order; and
 - 8.1.4 throughout the Warranty Period, operate in accordance with the Specifications, and otherwise in accordance with the operation of similar products.
- 8.2 If any Goods/Works are found to be defective or do not comply with clause 8.1.1 to 8.1.4 and the Council notifies the Supplier/Contractor of the defect during the Warranty Period, the Supplier/Contractor must, at its own cost, promptly rectify any defects in the Goods/Works within the Warranty Response Time.
- 8.3 Failing rectification by the Supplier/Contractor during the Warranty Response Time, the Council may rectify defects at the cost of the Supplier/Contractor.

9. **INSURANCE**

- 9.1 The Supplier/ Contractor must maintain at all times their Insurances for at least the cover specified in the Purchase Order.
- 9.2 The Supplier/Contractor must maintain the Supplier's/Contractor's Insurances for at least six years following completion of the Works unless otherwise specified in the Purchase Order.
- 9.3 The Supplier/Contractor must provide certificates of currency in respect of the Supplier/Contractor's Insurances before commencing the Works and when reasonably requested by the Council.

10. WORK HEALTH & SAFETY AND RETURN TO WORKSA (WORKS ONLY)

If applicable:

- 10.1 the Contractor must comply with the *Work Health and Safety Act 2012 (SA)*, any regulations made under it and any associated policies adopted by the Council, and must ensure that its employees and contractors comply with all laws, regulations, notices and codes of practice having application to this agreement;
- 10.2 the Contractor must comply with the *Return to Work Act 2014 (SA)* and any regulations made under it;
- 10.3 the Contractor must comply with all reasonable directions and procedures relating to security and work health and safety as required by the Council; and
- 10.4 the Contractor must immediately notify the Council of any incident or accident arising from the performance of this agreement, including any incident or accident involving the public.

11. INDEMNITIES

The Supplier/Contractor indemnifies the Council against all actions, proceedings, claims, demands, charges, penalties, expenses and all other liabilities arising from or in relation to the performance or non-performance of any of the Supplier/Contractor's obligations under this agreement. This indemnity is reduced by the extent to which the Council contributes to the event giving rise to the claim for the indemnity.

12. INTELLECTUAL PROPERTY

- 12.1 Other than any drawings or specifications provided by the Council to the Contractor, the Contractor warrants that the Works will not infringe the Intellectual Property of any third party.
 - 12.2 The ownership of Intellectual Property produced as a result of this agreement vests solely in the Council immediately on its creation.
 - 12.3 The Contractor is granted a royalty free non-transferrable non-exclusive licence to use any Intellectual Property:
 - 12.3.1 produced as a result of this agreement; or
 - 12.3.2 relating to the drawings and specifications or the Confidential Information provided by the Council to the Contractor;
- solely for the purpose of completing the Works and for no other purpose.

13. FORCE MAJEURE (WORKS ONLY)

No party is liable for any failure to perform or delay in performing its obligations under this agreement if that failure or delay is due to anything beyond that party's reasonable control. If that failure or delay exceeds 60 days, the Council may terminate this agreement with immediate effect by giving notice to the other party.

14. TERMINATION

- 14.1 The Council may immediately terminate this agreement by giving notice to the other party if the Supplier/Contractor:
- 14.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement;
 - 14.1.2 breaches a material provision of this agreement and fails to remedy the breach within a specified reasonable time after receiving notice requiring it to do so;
 - 14.1.3 becomes an externally-administered body corporate or an insolvent under administration or becomes insolvent (each within the meaning of the *Corporations Act 2001*).
- 14.2 Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

15. CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION (WORKS ONLY)

- 15.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes contemplated by this agreement, and agrees that it will:
- 15.1.1 keep confidential; and
 - 15.1.2 not use or reproduce in any form;
- any Confidential Information belonging to the other party. A party may depart from its obligations under this clause only with the written consent of the other party or as required by law or the terms of this agreement.
- 15.2 The Contractor consents to any disclosures made as a result of the Council complying with its obligations under the *Freedom of Information Act 1991 (SA)*, subject to any legally required consultation.
- 15.3 Subject to clause 15.1, for the purposes of the FOI Act, the terms specified confidential in the Purchase Order are confidential (**confidential sections**).
- 15.4 Unauthorised disclosure of the confidential sections and their subject matter is a breach of this agreement.

16. AUDIT OF SERVICES

The Supplier/Contractor must keep the Council fully and regularly informed as to all matters relating to the Goods/Works and must provide to the Council any information reasonably requested by the Council for the purposes of monitoring the performance of the Supplier/Contractor's obligations under this agreement.

17. DISPUTES

All disputes or differences between the Council and the Supplier/Contractor must be referred to an arbitrator, agreed by the parties or in the absence of agreement appointed by the President of the Local Government Association of South Australia.

18. **RELATIONSHIP**

This agreement does not create a relationship of employment, agency or partnership between the parties.

19. **MISCELLANEOUS**

19.1 ***Special conditions***

If there is an inconsistency between a special condition set out in the Purchase Order and the rest of this agreement, the special condition governs to the extent of the inconsistency.

19.2 ***Alteration***

This agreement may be altered only in writing signed by each party.

19.3 ***Assignment (goods only)***

The Supplier must not assign this agreement or any right under it without the prior written consent of the Council.

In any application for such consent, the Supplier must provide all information required by the Council, including evidence that the proposed assignee is capable of providing the Goods.

Assignment (works only)

The Contractor must not assign this agreement or any right under it without the prior written consent of the Council.

19.4 ***Entire agreement***

This agreement:

19.4.1 constitutes the entire agreement between the parties about its subject matter; and

19.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

19.5 ***Waiver***

A waiver of a provision of or right under this agreement:

19.5.1 must be in writing signed by the party giving the waiver;

19.5.2 Is effective only to the extent set out in the written waiver.

19.6 ***Exercise of power***

19.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

19.6.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

19.7 ***Survival***

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

19.8 **Governing law**

19.8.1 This agreement is governed by the law in South Australia.

19.8.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

19.9 **Ombudsman**

The Supplier/Contractor acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Supplier/Contractor must ensure compliance with all obligations arising under that Act and all other applicable laws.

19.10 **ICAC**

The Supplier/Contractor acknowledges and agrees that by entering into this agreement with the Council the Supplier/Contractor will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act, 2012 (SA) (ICAC Act)* and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

20. **GST**

20.1 The total amounts payable under this agreement are inclusive of GST, if applicable.

20.2 Notwithstanding any other provision of this agreement, the Council need not make any payment for a taxable supply made by the Contractor under this agreement until the Supplier/Contractor has given the Council a tax invoice in respect of that taxable supply.

21. **NOTICES**

21.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

21.1.1 in writing, in English and signed by a person authorised by the sender; and

21.1.2 hand delivered or sent by pre-paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Purchase Order, as varied by any Notice given by the recipient to the sender.

21.2 A Notice is deemed to be received:

21.2.1 if sent by prepaid post, two business days after posting;

21.2.2 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;

21.2.3 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999 (Cth)* if the notice was being given under a law of the Commonwealth of Australia