

PURCHASE ORDER TERMS AND CONDITIONS - WORKS

1. Formation of Contract

Council has issued a Purchase Order for the Works. The Purchase Order creates a contract between the Supplier and Council.

2. Definitions

In the Contract, the following terms shall, if not inconsistent with the context, have the meanings indicated:

"Conflict of Interest" means any circumstance, condition or thing which may adversely affect the Supplier's ability to perform the Works efficiently, effectively and in accordance with the highest standards of probity, integrity and honesty, including, without limitation, any interest of a Relevant Party;

"Contract" means the Contract evidenced by the Request for Quote, Purchase Order Terms and Conditions - Works, the Purchase Order and any other documents to which reference is made in the Purchase Order as forming part of the Contract;

"Council" means the Hepburn Shire Council;

"GST" means the goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"Intellectual Property" means copyrights, patents, trademarks, designs (registered or unregistered), trade secrets and know how;

"OH&S" means occupational health and safety;

"Purchase Order" means the purchase order which initiates the Contract;

"Relevant Party" means:

- the Supplier and the Supplier's employees, agents or sub-contractors;
- an associate of the Supplier or the Supplier's employees, agents or sub-contractors;
- a company in which the Supplier or the Supplier's employees, agents or sub-contractors are involved, whether as an officer, shareholder, employee or otherwise; or
- any other person with whom the Supplier or Supplier's employees, agents or sub-contractors has or have a financial or business association, whether directly or indirectly;

"Site" means the location where the Works are to be performed, as indicated in the Purchase Order or specification;

"Supplier" means the party nominated as such in the Purchase Order; and

"Works" means -

- the performance of work;
- the supply of materials; and

- all other things required to be done -

under the Contract by the Supplier as indicated in the Purchase Order or specification and includes any matters reasonably to be inferred from the Contract or trade usage.

3. Interpretation

In the Contract, unless inconsistent with the context:

- headings and underlinings are for convenience only and do not affect interpretation;
- words expressed in the singular include the plural and vice versa;
- where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- a reference to a person includes a reference to a firm, corporation or other corporate body and vice versa;
- a reference to a party in a document includes that party and its legal representatives, successors, permitted assigns, receivers, receivers and managers, liquidators and administrators;
- a reference to any Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act,
- a reference to any Act, regulation, planning scheme, proclamation, local law or by-law includes all Acts, regulations, planning schemes, proclamations, local laws and by-laws amending, consolidating or replacing same;
- a reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document; and
- a reference to the Supplier includes, where appropriate, the Supplier's:
 - employees; and
 - sub-contractors and the employees of such sub-contractors.

The Contract constitutes the whole understanding between the parties and embodies all terms and conditions under which the Works are to be performed by the Supplier. All previous negotiations and understandings between the parties on this subject matter shall cease to have effect from the date of the Contract.

The law of the State of Victoria governs the Contract and any legal proceedings under the Contract.

If the Supplier consists of two or more parties, the Contract shall bind each of them severally and jointly.

If a provision, or part of a provision, in this Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision, or part of a provision, must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision, or part of a provision, as required in this clause, that provision, or part of a provision, is severable without affecting the validity or enforceability of the remainder of the Contract.

4. The Works

The Supplier must perform the Works:

- by any date stated in the Purchase Order or specification or, if no date is stated, within a reasonable time;
- in a diligent manner;
- in conformity with all applicable standards issued by Standards Australia and the International Organization for Standardisation;
- in accordance with the principles of quality assurance;
- in a proper and workmanlike manner;
- with a level of care, skill, knowledge and judgment in accordance with best industry practice;
- in a manner which meets and is fit for Council's intended purpose in having the Works performed;
- using only new materials, unless specified otherwise in the Purchase Order or specification; and
- in accordance with the Contract.

Council must give the Supplier such access to the Site as the Supplier reasonably requires to perform the Works. The Supplier must not use, or permit the Site to be used, for any purpose other than the performance of the Works. The Supplier must take all reasonable steps to ensure the security of the Site. The Supplier must comply with all directions of Council with respect to the Site and the behaviour of the Supplier's staff at the Site. The Supplier must keep the Site in a clean and tidy condition.

The Supplier must take all measures necessary to avoid, if possible, or otherwise to minimise, any noise, dust, disturbance or nuisance at the Site or adjacent to the Site.

The Supplier must promptly restate any damage arising during the performance of the Works.

The Supplier must promptly rectify any defect in the Works or other breach of the Contract of which it is given notice by Council.

The Supplier will remain responsible for the performance of the Works notwithstanding the acceptance or review of the Works, or any element of the Works, by Council or any member of Council's staff.

If the Purchase Order or specification names the persons who are to perform the Works, the Supplier must ensure that the Works are performed by and only by the named persons.

The Supplier must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations, local laws and by-laws in any way applicable to the performance of the Works or the Contract.

5. Intellectual Property

Ownership of, and the Intellectual Property in, any documents, data, designs, models, computer software and other information created by the Supplier in the course of performing the Works vests in Council. The Supplier must:

- deliver all such documents, data, designs, models, computer software and other information to Council at the conclusion of the performance of the Works, or earlier termination of the Contract, if they have not previously been delivered to Council in accordance with the Contract; and
- on demand, execute any waivers, notices or assignments necessary to enable Council to register or otherwise obtain title to the Intellectual Property in such documents, data, designs, models, computer software and other information.

6. Confidentiality and Conflict of Interest

The Supplier must ensure that its employees, sub-contractors and agents do not disclose any information or documents obtained in the course of performing the Services to any third party without the prior written consent of Council.

The Supplier warrants that it is unaware at the date of the Contract of any Conflict of Interest existing or likely to arise during the performance of its obligations under the Contract. The Supplier must:

- not enter into any contract or arrangement, or do any other thing, which may give rise to a Conflict of Interest with respect to its obligations under the Contract; and
- use its best endeavours to ensure that no Relevant Party enters into any contract or arrangement, or does any other thing, which may give rise to a Conflict of Interest with respect to the Supplier's obligations under the Contract.

The Supplier must immediately make a full disclosure in writing to Council of the existence, nature and extent of any actual or potential Conflict of Interest with respect to the Supplier's obligations under the Contract.

7. Financial Provisions

If the Supplier complies with its obligations under the Contract, Council must, unless different terms of payment are specified in the Purchase Order, make the payment or payments specified in the Purchase Order within 30 days from the date of a valid tax invoice for the amount payable. Council will not make payment on any tax invoice, unless it specifies the Purchase Order number issued by Council. Unless otherwise specified in the Purchase Order, the Supplier must not forward a tax invoice to Council until all of the Works have been completed.

If a payment is calculated on a basis which is described as exclusive of GST, the payment must be increased by the applicable amount of GST ("GST Amount"). The GST Amount must be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST. The Supplier must provide to Council a valid tax invoice prior to the time of, and as a condition of, payment of any GST Amount.

All payments to the Supplier will be made by way of electronic funds transfer. The Supplier must, prior to the commencement of the Works, provide details of the Supplier's BSB and bank account to enable payments to be made by this means.

8. Defaults and Termination

If the Supplier defaults in the performance or observance of any obligation it has under the Contract, Council may terminate the Contract without prior notice to the Supplier. If Council terminates the Contract, Council shall not be liable to make any payments to the Supplier with respect to the termination of the Contract or the performance of the Works.

Council may terminate the Contract at any time by written notice to the Supplier. If Council terminates the Contract under this clause, Council must make reasonable payment to the Supplier for the performance of the Works until the date of the termination of the Contract.

9. Sub-Contracting and Assignment

The Supplier must not sub-contract the whole or any portion of its obligations under the Contract or assign any of its rights under the Contract, except with the prior written consent of Council. Except in so far as any consent given by Council expressly provides otherwise, no sub-contractor or assignee will have any rights under the Contract against Council or be entitled to receive any payments under the Contract from Council.

10. Insurances

The Supplier must, at all times while performing the Works, be the holder of:

- a current public liability policy of insurance in the name of the Supplier providing coverage for an amount per event of at least \$10,000,000; and
- a WorkCover policy of insurance with respect to all of its employees.

The Supplier must:

- ensure that any sub-contractor to the Supplier effects insurances in the terms stated in this clause; and
- provide Council with certificates of currency in respect of the insurances referred to in this clause within two (2) days after a written request being made by Council.

11. Indemnity

The Supplier must indemnify, keep indemnified and hold harmless Council, and its Councillors and staff, from and against all actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) consequent upon, occasioned by, or arising from any negligent act or omission, breach of statute, breach of intellectual property rights or breach of the Contract in the performance or purported performance of the Supplier's obligations under the Contract. The Supplier's obligation to indemnify Council under this clause shall not apply to the extent that any liability is caused by any negligent act or omission of Council.

12. Audit

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

13. Occupational Health and Safety (OH&S)

The Supplier must itself, and must ensure that any sub-contractors of the Supplier, at all times identify and take all necessary precautions for the health and safety of all persons, including the Supplier's employees and sub-contractors, staff of Council and members of the public, who may be affected by the performance of the Works.

The Supplier must immediately comply with any and all directions by Council relating to OH&S. The Supplier must comply with and ensure that its employees, sub-contractors and agents comply with any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the performance of the Works.

The Supplier must prepare an OH&S management plan (including a safe work method statement) for the performance of the Works and submit it to Council for approval. The Supplier must not commence the performance of the Works until the OH&S management plan is approved, in writing, by Council.

14. Dispute Resolution

A party claiming that a dispute has arisen under this Contract must give written notice to the other party specifying the nature and details of the dispute. The parties must negotiate in good faith to resolve the dispute. If the parties are unable to resolve the dispute within twenty-one (21) days of the receipt of any notice of dispute by either party, both parties must promptly refer the dispute to mediation. The mediator must be agreed between the parties within ten (10) business days from the date of the receipt of the notice referring the dispute to mediation by the Supplier or Council.

Any determination made is binding on the parties and the Commercial Arbitration Act 1984 applies to the determination except to the extent otherwise agreed by the parties.

Nothing in this clause will prevent a party from seeking interlocutory relief.

15. Variations

The scope of Works may only be varied in writing by Council.

Prior to the direction of any variation, the parties must agree on any adjustment to the amount payable under the Contract with respect to the variation or the mechanism by which such adjustment must be calculated.

16. Delays

If the Supplier is delayed in performing the Works by -

- any act or omission of Council or Council's staff or agents; or
- any other cause beyond the reasonable control of the Supplier -

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the Supplier must give immediate written notice to Council and the date for completion of the Works must be extended by such period as Council, acting fairly and reasonably, considers appropriate. Council must give notice to the Supplier of its determination.

17. Survival of Rights and Obligations

The rights and obligations of the parties under these terms and conditions shall survive the termination or expiry of the Purchase Order.