

PURCHASE CONDITIONS

1. PURPOSE & APPLICATION

- 1.1. The Supplier shall supply to Council Goods and/or Services in accordance with these Conditions and the Purchase Order, which is expressly incorporated into these Conditions.
- 1.2. The Supplier's terms and conditions (whether or not supplied) will be of no legal effect and will not constitute part of these Conditions or an agreement with Council (even if signed by Council).
- 1.3. These Conditions may only be amended by agreement in writing.
- 1.4. If there is any inconsistency between the Purchase Order and these Conditions, the Purchase Order prevails to the extent of the inconsistency.
- 1.5. If more than one person is the Supplier those persons contract jointly and severally for themselves and each other.

2. LAW & JURISDICTION

- 2.1. These Conditions are governed by and construed in accordance with the Laws of Victoria, Australia and the parties submit to the jurisdiction of the Victorian Courts.
- 2.2. If any provision of these Conditions is invalid under any Law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Conditions and the remainder of these Conditions will continue to have full force and effect.

3. COMPLIANCE

The Supplier agrees that, in supplying Goods and/or Services, it will comply with:

- 3.1. the Information Privacy Principles described in the Information Privacy Act 2000 (Vic), as if that Act applied to it;
- 3.2. section 38(1) of the Charter of Human Rights and Responsibilities Act 2006 (Vic), as if that sub-section applied to it; and
- 3.3. all directions, procedures and policies of Council as notified by Council or as might be inferred from the fact of supply of Goods and/or Services.

4. SUPPLY & DELIVERY

- 4.1. Upon request, the Supplier will provide Council with a written report giving details of the status of Goods and/or Services, including tasks completed, tasks yet to be completed and estimated completion dates.
- 4.2. Time is of the essence. Supply of Goods and/or Services must be made at the Delivery Address by the Delivery Date, in the manner stated in the Purchase Order.

5. INSURANCE

The Supplier must maintain the insurance stated in the Purchase Order to cover the Supplier and Council against any liability that may arise in the performance of Supplier's obligations under these Conditions and must note Council's interest as the Supplier's client.

6. RISK & TITLE

- 6.1. Ownership of, and title to, Goods passes to Council upon delivery or payment of Goods, whichever occurs first.
- 6.2. Risk of loss or damage to Goods passes to Council on delivery of Goods.

7. PRICE & PAYMENT

- 7.1. Upon receipt of a valid Tax Invoice, Council shall pay the Supplier the Price in the manner specified in the Purchase Order.
- 7.2. The Price is inclusive of all costs, taxes and duties (except GST) incurred by the Supplier in the supply of Goods and/or Services.
- 7.3. Council may reduce any payment due to the Supplier under these Conditions by any amount which the Supplier must pay the Council, including costs, charges, damages and expenses and any debts owed by the Supplier to the Council on any account whatsoever. This does not limit Council's right to recover those amounts in other ways.

8. GST

To the extent that the Supplier makes a taxable supply in connection with these Conditions then, except where express provision is made to the contrary, the amount payable by Council of that supply is a GST exclusive amount and Council will pay to the Supplier of it the GST payable in respect of that supply in addition to the other consideration payable. The Supplier's right to payment of GST is subject to a valid Tax Invoice being delivered to Council.

9. QUALITY

- 9.1. Goods and/or Services must match the description referred to in the Purchase Order and, if the Supplier gave Council a sample of Goods or a demonstration of Services, Goods and/or Services must be of the same nature and quality as the sample or demonstration given.
- 9.2. Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied and for any other purpose the Council specifies.
- 9.3. Goods and/or Services must be supplied with all due skill and care.
- 9.4. Unless otherwise specified in writing, Goods must be new.
- 9.5. If the Supplier is in breach of this clause 9, Council may reject Goods and/or Services and obtain a refund of any amounts paid to the Supplier in respect of those Goods and/or Services; require the Supplier to resupply the Goods or Services at no cost to Council; or pay Council the cost of the resupply of the Goods and/or Services by a third party.

10. INTELLECTUAL PROPERTY

- 10.1. All intellectual property created in the course of the supply of Goods and/or Services is, from the time of creation, owned by Council.
- 10.2. The Supplier must not use, disclose, copy or reproduce that intellectual property except for the purposes of complying with these Conditions.
- 10.3. The Supplier must at all times indemnify Council, its officers, employees and agents, from and against all loss, damage, costs (including legal costs and expenses on a solicitor/own client basis), compensation and expenses arising out of the infringement or alleged infringement of any intellectual property, by reason of the purchase, possession or use of Goods or the outcomes of Services.

11. CANCELLATION FOR CONVENIENCE

- 11.1. Council may at any time give notice in writing to the Supplier to cancel a Purchase Order, or any part, without cause.
- 11.2. On receipt of the notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.
- 11.3. Upon cancellation under this clause, the Supplier may claim compensation and Council must pay to the Supplier such sums as reasonable in respect of any resulting direct loss or damage, but the Supplier will not be entitled

to claim compensation for any loss of anticipated profits or other consequential loss.

- 11.4. The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under these Conditions will not exceed the Price payable under the Purchase Order.

12. CANCELLATION FOR DEFAULT BY SUPPLIER

- 12.1. If the Supplier breaches these Conditions, Council may give notice to the Supplier specifying the breach and requiring that it be remedied within 7 days.
- 12.2. If, within 7 days after receipt of the notice, the Supplier fails to remedy the breach, Council may (without prejudice to any of its other rights):
 - 12.2.1. suspend payment; or
 - 12.2.2. cancel the Purchase Order and any other Purchase Orders and shall be relieved of paying the Price for Goods or Services not supplied.

13. INSOLVENCY OF THE SUPPLIER

If the Supplier, being a person, commits an act of bankruptcy; or, being a company, commits an act of insolvency, Council may cancel the Purchase Order and shall be relieved from paying the Price for Goods or Services not supplied.

14. SUBCONTRACTING

The Supplier must not, without the written consent of the Council, sub-contract or assign the whole or any portion of its rights and obligations under these Conditions, and no sub-contractors or assignees will have any rights under these Conditions against Council or be entitled to receive any payments under these Conditions from Council. If Council gives consent in accordance with this Clause, the Supplier remains fully responsible for performance under these Conditions.

15. INDEMNITY

The Supplier must at all times indemnify Council, its officers, employees and agents from and against any loss (including legal costs and expenses), or liability, incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such loss or liability was caused by any unlawful or negligent act or omission of the Supplier, its officers, employees, agents or subcontractors.

16. WAIVER

No waiver by any party of any default in the strict and literal performance of or compliance with any provision of these Conditions will be deemed to be a waiver of strict and literal performance of and compliance with any other provision nor to be a waiver of, or in any way release, any party from compliance with any provision in the future.

17. NO DISCLOSURE

The Supplier must not make any public disclosure, communication, comment or announcement about the supply of Goods and/or Services or these Conditions except with the prior written consent of Council.

18. NO RELATIONSHIP

These Conditions do not constitute an agency, partnership, joint venture or employee, employer or representative relationship between the parties.

19. NOTICES

- 19.1. A notice required or permitted to be given by one party to another under these Conditions must be in writing, addressed to the other party and:
 - 19.1.1. delivered to that party's address; or
 - 19.1.2. transmitted by email to that party's email address.
- 19.2. A notice given to a party in accordance with Clause 19.1 must be treated as having been duly given and received:
 - 19.2.1. if delivered to a party's address, on the day of delivery; or
 - 19.2.2. if transmitted by email to a party's email address, when a delivery confirmation is received, by the sender recording the time the email was delivered.

20. DISPUTE RESOLUTION

- 20.1. If a Dispute arises under these Conditions, the parties will attempt to negotiate a resolution by good faith negotiations.
- 20.2. If a dispute persists for more than 14 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.
- 20.3. Subject to Clause 20.4, neither party may commence legal proceedings in relation to a Dispute unless the dispute resolution process outlined in this Clause 20 has first been complied with.
- 20.4. Nothing in these Conditions will prejudice the right of a party to institute court proceedings to enforce payment due under this Contract or to seek urgent injunctive or declaratory relief in respect of a Dispute or any matter arising under these Conditions.
- 20.5. Pending resolution of any Dispute, the parties will continue to perform their obligations under these Conditions without prejudice to their respective rights and remedies (except where such obligations are the subject of the Dispute).

21. DEFINITIONS

Conditions means these Purchase Conditions and the Purchase Order.

Council means Melton City Council.

Days means a day other than a Saturday, Sunday or a public holiday in Victoria.

Delivery Address means the place of supply of Goods and/or Services as specified in the Purchase Order.

Delivery Date means the date for supply of Goods and/or Services as specified in the Purchase Order.

Dispute means a dispute or disagreement that arises between the parties in relation to these Conditions.

Goods means Goods, if any, described on the Purchase Order.

GST, Tax Invoice and Taxable Supply each have the meaning given to that term under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Law means Commonwealth, State and local government legislation, regulations, by-laws, orders, awards and proclamations; common law and equity; Authority requirements, guidelines consents, certificates, licences, permits and approvals; with which the Supplier is legally required to comply.

Price means the price set out in the Purchase Order for Goods and/or Services.

Purchase Order means the Request for Quotation, completed by the Supplier and accepted in writing by Council for the Supply of Goods and/or Services.