

AUCKLAND COUNCIL ORGANISATION - PURCHASE ORDER TERMS AND CONDITIONS – 6 April 2016

These terms & conditions apply to all Purchase Orders issued by the applicable Council Organisation on or after 6 April 2016 until further notice.

1. FORMATION OF THE CONTRACT

- 1.1 Subject to clause 1.2, this contract for the sale and purchase of Goods and/or Services (**Contract**) will arise on the Supplier's acceptance of an Order (whether by written acknowledgement or by Delivery) and will embody the terms of the relevant Order and the following terms and conditions. In the event of any inconsistency between the terms of the relevant Order and these terms and conditions, the terms of the relevant Order will prevail.
- 1.2 In the event that the parties have signed a written agreement for the provision of the Goods and/or Services, the terms and condition of that agreement will apply and not these terms and conditions.
- 1.3 Subject to clause 1.2, the terms of the relevant Order together with these terms and conditions comprise the entire agreement of the parties in relation to the supply of Goods and/or Services and supersede any previous discussions, arrangements and representations. Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Goods and/or Services (for example, the Suppliers purchase terms and conditions) will not apply.
- 1.4 Orders may be placed by any department of the Council Organisation. In all such cases, the Council Organisation is the principal contracting party and is solely responsible for the obligations arising under the Contract.
- 1.5 If the Order is not accepted by the Supplier's written acknowledgement or Delivery within 10 Days of the date of the Order, the Council Organisation may cancel an Order by written notice to the Supplier.
- 1.6 Any estimates given by the Council Organisation may be inaccurate and the Supplier will not rely on them in any circumstances.

2. TERMS OF PAYMENT

- 2.1 The Supplier must on Delivery of the Goods, send detailed advice notes (packing slips) with the Goods to each delivery point.
 - (a) on Delivery of the Goods and/or Services, send valid GST invoices (if GST is applicable) to the Council Organisation at the address stated in the Order; and
 - (b) ensure that all invoices, packing slips, advice notes and correspondence contain the Purchase Order Number and any other information that the Council Organisation may request.
- 2.2 The Supplier must submit a valid and proper tax invoice for payment for the Goods and/or Services following their Delivery.
- 2.3 The Supplier's invoice must:
 - (a) be typewritten (either computer generated or typed), and must not be handwritten;
 - (b) be sent by email to invoices@aucklandcouncil.govt.nz, and cc'd to the Council representative responsible for the Order with the Supplier;
 - (c) include the Supplier's GST number and any other information for a valid GST invoice (if applicable);
 - (d) include the relevant Purchase Order Number;
 - (e) include a description of the Goods and Services supplied and any relevant dates of supply; and
 - (f) show the total payable by the Council Organisation, with details of how this amount has been derived.
- 2.4 The Supplier acknowledges that payment may end up being delayed if the Council Organisation's invoicing and payment process requirements are not followed by the Supplier.
- 2.5 Subject to compliance with these terms and conditions and there not being manifest errors or discrepancies, the Supplier's invoice for the Goods and/or Services will be paid by the Council Organisation on the 20th day of the month following the date of the invoice, provided the invoice has been received by the Council Organisation no later than the 5th day of the month.

Example: For monthly Services provided in January:

- An invoice dated 31st January and delivered by 5th February will be paid on 20 February
- An invoice dated 31st January and delivered after 5th February will be paid on 20th March.

- 2.6 If any part of an invoice or the Delivery of the Goods and/or Services is disputed by the Council Organisation, the Council Organisation may withhold payment of the relevant invoice or part thereof until such time as the dispute is resolved.
- 2.7 In making payment for the Goods and/or Services, the Council Organisation may withhold, deduct or set off any amount that was previously overpaid or any amount recoverable by the Council Organisation from the Supplier under the Contract or otherwise.

3. PACKING AND DELIVERY

- 3.1 The Supplier must have a valid Purchase Order Number before supplying Goods and/or Services
- 3.2 Goods supplied against an invalid Purchase Order Number (or without

packing slips marked with the valid Purchase Order Number) may be returned at the Supplier's expense including the cost of packing, transporting, insuring and handling of the rejected Goods.

- 3.3 The Supplier will adequately pack and protect the Goods against damage and deterioration, at the Supplier's expense.
- 3.4 The Supplier must Deliver the Goods and/or Services not later than the time/s specified in the Order or, if no time is specified in the Order, within a reasonable time of the date of the Order. Time will be of the essence.
- 3.5 The Council Organisation accepts no responsibility for the Delivery of the Goods and/or Services (unless otherwise agreed) or for packing materials or cases.
- 3.6 If an emergency or disaster occurs, the Supplier will use its best endeavours to provide or delay Delivery as requested by the Council Organisation.

4. PASSING OF TITLE AND RISK

- 4.1 Subject to the Council Organisation's rights under clause 3, risk and title to the Goods will pass to the Council Organisation on Delivery. The Supplier will not register a security interest in the Goods under this Contract or the terms and conditions of any other agreement between the parties (unless expressly agreed in writing).

5. WARRANTIES

- 5.1 In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to the Council Organisation and to any subsequent purchaser of the Goods and/or Services that:
 - (a) the Goods and/or Services will comply with any specifications supplied by the Council Organisation or agreed between the parties, will be fit for any purpose that the Council Organisation makes known to the Supplier and will comply with all applicable legislation, regulations and codes of practice;
 - (b) at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance;
 - (c) the Supplier has all Intellectual Property rights relating to the Goods and/or Services required for the Goods and/or Services to be provided to the Council Organisation and neither the Goods and/or Services, nor the provision or use of the Goods and/or Services by the Council Organisation will breach any Intellectual Property rights of any third party;
 - (d) the Goods and/or Services will be Delivered at the time specified on the Order or, if not specified, within a reasonable time of placing the Order;
 - (e) the Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience; and
 - (f) the Supplier will comply with all applicable legislation, regulation and industry codes of practice.

6. DEFAULT AND CANCELLATION

- 6.1 If the Supplier breaches any term of the Contract then, at the sole option of the Council Organisation, and without prejudice to any other remedy or right, the Council Organisation may:
 - (a) If the term relates to Goods, reject the Goods in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense including the cost of packing, transporting, insuring and handling the rejected Goods and the Supplier must immediately reimburse the Council Organisation for any monies paid in respect of the returned Goods;
 - (b) If the term relates to Goods, require the Supplier to replace, repair, reinstate or re-supply the Goods at the Supplier's expense so that they conform to the Contract or may have the Goods replaced, repaired or re-supplied by another person and recover the cost of doing so from the Supplier;
 - (c) If the term relates to Services, require the Supplier to perform the Services again to the required standard at the Supplier's expense or may have the Services re-supplied by another person and recover the cost of doing so from the Supplier;
 - (d) If the term relates to health and safety, immediately terminate (or suspend Supplier's performance of) this Contract in whole or in part and/or any Order by written notice to Supplier;
 - (e) and/or suspend payment for the Goods and/or Services until the breach has been remedied to the Council Organisation's reasonable satisfaction.

Any contract suspension is not to the Council Organisation's financial account.

- 6.2 The Council Organisation may terminate the Contract or cancel any Order effective immediately if the Supplier breaches any provision of the Contract and fails to remedy the breach within 10 Days of giving written notice to the Supplier specifying the breach and requiring it to be remedied. Breach of clause 5 and/or 12 by the Supplier may be deemed as breach of the Contract whether or not the Council Organisation elects to accept the Goods and/or Services in question.
- 6.3 The Council Organisation may, by written notice to the Supplier, terminate the Contract or cancel any Order immediately if the Supplier becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.
- 6.4 The Council Organisation may terminate this Contract by giving the Supplier 10 Days written notice. In the event that the Council Organisation does so, this Contract will terminate and any outstanding Orders at the end of the period of notice will be deemed cancelled.
- 6.5 Subject to the Council Organisation's rights of deduction or set-off, the Council Organisation will pay the Supplier for any Goods and/or Services validly provided up to the date of termination.
- 6.6 No failure or delay on the part of the Council Organisation to exercise any of its rights in respect of any default by the Supplier will prejudice the Council Organisation's rights in connection with that default or any subsequent default.
- 6.7 Termination of the Contract and/or cancellation of an Order does not affect any responsibilities which are intended to continue or come into effect after the Contract terminates.
7. **INDEMNITY:** The Supplier will fully protect, indemnify and hold harmless the Council Organisation, its officers, employees and agents from and against any liability, losses, damages, actions, proceedings, claims, demands, costs and expenses including solicitor and own client costs, incurred in connection with any breach by the Supplier of any term of the Contract or the negligent or wrongful act or default of the Supplier or any of its employees, subcontractors or agents. This obligation continues after the termination or expiry of the Contract.
- 7.1 Records and information requests: Supplier must keep full records and documentation in relation to the Services and this Agreement ("Records") and provide copies of Records to Council Organisation on reasonable request, and immediately notify Council Organisation of any disclosure requests Supplier receives (including under the Local Government Official Information and Meetings Act 1987).

8. RELATIONSHIP BETWEEN PARTIES

- 8.1 Nothing in the Contract should be interpreted as constituting either the Council Organisation or the Supplier, an agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in the Contract.
- 8.2 The Council Organisation's relationship with the Supplier is not exclusive.
- 8.3 The Supplier acknowledges that where the Council Organisation acquires Goods or Services as a consumer (as that term is defined in the Consumer Guarantees Act 1993), then that act applies to the acquisition of the Goods or Services.
- 8.4 The Council Organisation's relationship with the Supplier is not exclusive.
- 8.5 The Supplier acknowledges that where the Council Organisation acquires Goods or Services as a consumer (as that term is defined in the Consumer Guarantees Act 1993), then that act applies to the acquisition of the Goods or Services.
- 8.6 The Council Organisation may carry out a review of the Supplier's performance under this Contract at any time and the Supplier agrees to co-operate fully with the Council Organisation, including by attending all relevant meetings and providing all requested records and information.

9. CONFIDENTIALITY

- 9.1 All Confidential Information will be and will remain the property of the Council Organisation, and the Supplier must:
- keep all Confidential Information confidential and use the Confidential Information only for the purpose of the Contract;
 - not disclose any Confidential Information to any person without the prior written consent of the Council Organisation (unless the disclosure is required under law); and
 - destroy or return the Confidential Information to the Council Organisation upon the Council Organisation's request at any time, provided that the Supplier may disclose Confidential Information to its employees, subcontractors and advisers to the extent necessary for the purposes of the Contract. The Supplier will ensure that its employees, subcontractors and advisers will comply with these obligations of confidentiality.
- 9.2 The Supplier will not use the Council Organisation's name in advertising its business or activities without the prior written consent of the Council Organisation, and will comply with all reasonable terms and conditions upon which such permission may be given.
- 9.3 Upon request, the Supplier will provide to the Council Organisation a copy of any record on the Supplier's file or within the possession or control of the Supplier, where receipt of such record may be reasonably required by the Council Organisation.

- 9.4 This clause 9 survives termination and expiry of the Contract.

10. HEALTH AND SAFETY COUNCIL ORGANISATION PROTOCOLS

Where Services are being provided, the Supplier must at all times:

- Compliance:**
 - comply with all health and safety legislation, regulations, applicable codes of practice and standards, Council Organisation's health and safety policies and procedures, and any standard operating procedures;
 - ensure that it, takes all practicable steps to ensure the health and safety of all personnel of the Supplier, and any other parties associated with the Services, including Council Organisation, workers, visitors, subcontractors, service providers, the public, and visitors to any area under the control of the Supplier;
 - have, and keep current, all relevant Health and Safety qualifications required to perform its obligations under this Agreement;
 - immediately provide the Council Organisation with information about any health and safety matters relating to the Services, if requested; and
 - comply with all reasonable directions given by the Council Organisation in relation to health and safety in connection with this Agreement.
- Information requests:** The Supplier will, upon request immediately provide the Council Organisation with information about any health and safety matters relating to the Services.
- Cooperation:** The Supplier must:
 - so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with the Council Organisation in relation to the Services;
 - facilitate engagement between the parties (and/or its designees) in relation to work health and safety matters; and ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.
- Council Organisation Site:** If the Supplier is carrying out the Services at Council Organisation (or CCO) owned or controlled site then the Supplier must:
 - participate in the Council Organisation's emergency procedures, workplace assessments, training or orientation and any other relevant health and safety activities (if requested);
 - participate in the Council Organisation's worker participation practices if requested (if requested); and
 - identify and address any special needs requirements.
- Audits:** The Council Organisation (or its representatives) may carry out an audit of the Supplier to ensure compliance with all obligations set out under this clause 10. The Supplier must:
 - actively cooperate and participate in any health and safety audits carried out by the Council Organisation;
 - provide all necessary access and information required by the Council Organisation in relation to the audit and any other health and safety monitoring; and
 - take all reasonable steps to immediately rectify any issues raised by the Council Organisation.
- Incidents and investigations:** The Supplier must immediately notify the Council Organisation of any: (i) "notifiable event" (as defined in the Health and Safety at Work Act 2015); (ii) near miss or exposure the Supplier becomes aware of in the course of undertaking the Services, (iii) any WorkSafe inspection, investigation or information request in connection with the Supplier's performance of the Services; and/or (iv) breach of this clause 10; and provide the Council Organisation with such assistance and information as the Council Organisation requires in relation to any of these matters.
- Non-compliance (defective services):** Without limitation to the Council Organisation's other rights and remedies at law or under this Contract, the Council Organisation may immediately withhold any payment if the Supplier is in breach of any of its obligations under this clause.
- Health and Safety Plans:** The Supplier shall, prior to commencing the Services, undertake a site specific risk assessment and prepare and submit to the Council Organisation a site specific safety plan for the execution of the Services.

This clause 10 also applies to Supplier's subcontractors, including the reporting, notification and compliance obligations. Supplier shall ensure that its subcontractors are aware of and comply with these obligations. Clauses 10(e) and (f) survive termination and expiry of the Contract.

11. INTELLECTUAL PROPERTY

- 11.1 All Intellectual Property owned by either party and existing prior to the commencement of the supply of Goods and/or Services will remain the exclusive property of that party.
- 11.2 The Supplier agrees that all new Intellectual Property that arises or is created by the Supplier or any of the Supplier's employees, subcontractors or agents in the course of supplying the Goods and/or

- Services will be the Council Organisation's exclusive property.
- 11.3 The Supplier grants to the Council Organisation a perpetual, royalty free, non-exclusive licence to use all Intellectual Property owned by the Supplier under clause 11.1.

12. ASSIGNMENT AND SUBCONTRACTING

- 12.1 The Supplier may not assign, subcontract or otherwise transfer any of its rights, benefits or obligations under the Contract without the prior written consent of the Council Organisation. A change in the management or control of the Supplier or the sale of a major part of the Supplier's business or assets will be deemed to be an assignment for the purposes of this clause.
- 12.2 Where the Council Organisation consents to the Supplier assigning, subcontracting or transferring any of its obligations under, or aspect of, this Contract to a third party, the Supplier will remain fully responsible for all obligations to the Council Organisation under the Contract.

13. NOTICES

- 13.1 Any notice to be given under the Contract must be in writing and must be delivered or sent by post, fax or e-mail, if to:
- (a) the Council Organisation, to the address on the Order; or
 - (b) the Supplier, to its registered office, or if the Supplier has no registered office, its usual address.
- 13.2 A notice will be deemed to have received:
- (a) if delivered, when it is left at the relevant address;
 - (b) if sent by post, 2 Days after it has been posted;
 - (c) if sent by fax or email, the time set out on the relevant confirmation report evidencing an error-free transmission to the correct fax number or email address (as applicable)

14. REGULATORY CAPACITY

- 14.1 To the extent that the Council Organisation has regulatory authority or powers (**Regulatory Capacity**), this Contract does not bind or fetter the Council Organisation (or any other entity in the Auckland Council group) in its Regulatory Capacity.
- 14.2 The Supplier will not be entitled to any damages or other payment should the Council Organisation (or any other entity in the Auckland Council group), acting in its Regulatory Capacity, either decline any consent or permission, issue any consent or permission on terms that are unsatisfactory to any party or for any act or omission by the Council Organisation in its Regulatory Capacity.
- 14.3 If the Council Organisation is not Auckland Council, then the Supplier acknowledges that:
- (a) the Council Organisation is a separate legal entity from Auckland Council. The Council Organisation is entering into this Contract on its own behalf and not on behalf of the Auckland Council; and
 - (b) except to the extent expressly provided under this Contract, the Council Organisation shall have no liability in relation to any act or omission of the Auckland Council.

15. INTERPRETATION

In this Contract:

Council Organisation means the member of the Auckland Council group (being Auckland Council and its substantive council controlled organisations) named in the Order.

Confidential Information includes the terms of the Contract (including the details of any Order), information highlighted by the Council Organisation to the Supplier as being confidential and information that would reasonably be considered to be confidential, except information that is public knowledge.

Day means a day on which registered banks are open for business in Auckland, excluding Saturdays and Sundays.

Delivery means, in the case of Goods, the delivery of the Goods to and/or the provision of the Services at a location nominated by the Council Organisation.

Deliver has a corresponding meaning.

Goods means the goods, materials or substances specified in the Order and all parts or components of the same.

GST means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

Intellectual Property means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and, without limitation, includes inventions, discoveries and novel designs, whether or not registered or registerable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright may subsist now or in the future; confidential information, trade secrets and trademarks, including service marks and trading names (whether registered or unregistered).

Order means an official Council Organisation purchase order which may be placed with the Supplier from time to time containing a reference to

these terms and conditions.

Purchase Order Number means the number set out on the Order as relating to that particular purchase.

Services means the services specified in the Order to be provided or performed by the Supplier.

Supplier means the person, firm, company or corporate entity to whom the Council Organisation issues an Order and/or with whom the Council Organisation enters into the Contract.