

Central Coast Council – Purchase Order Terms and Conditions

1. General

- (a) These terms and conditions apply to any Purchase Order for Goods/Services issued by Central Coast Council (Order) and must be read in conjunction with any applicable *Contract*.
- (b) *Contract* means any contract for the purchase of the Goods/Services referred to in the Order.
- (c) *Normally* means unless otherwise agreed or stated in the Order, *Contract* or *Offer*.
- (d) *Offer* means an offer or quote from a Supplier to supply Goods/Services, that has been accepted by Council.
- (e) *Price* means the total amount set out in the Order for the Goods/Services.
- (f) If a *Contract* includes terms and conditions that are inconsistent with these terms and conditions, the *Contract* terms and conditions prevail to the extent of the inconsistency.
- (g) The Supplier's standard terms and conditions do not apply to this Order unless expressly agreed by Council.

2. Delivery - Goods

- (a) The Supplier must provide the Goods as specified in the Order, *Contract* or *Offer* and meet any requirements, standards and timeframes specified in the Order, *Contract* or *Offer*.
- (b) *Normally* the Supplier must arrange for the Goods to be suitably packed and delivered Free Into Store (FIS) and unloaded.
- (c) *Normally*, the Goods must be new and unused.
- (d) The Goods must meet all laws and Australian Standards applicable to the Goods.

3. Delivery – Services

- (a) The Supplier must provide the Services as specified in the Order, *Contract* or *Offer* and meet any requirements and standards specified in the Order, *Contract* or *Offer*.
- (b) The Supplier must commence and complete the Services within the dates or timeframes specified in the Order, *Contract* or *Offer*, or within a reasonable time if there are no date(s) specified.
- (c) The Services must be provided with the care and skill and technical knowledge that would be expected of an experienced, professional supplier of similar services, and the Supplier must take all necessary steps to avoid loss and damage.
- (d) The Services must be provided safely and comply with all laws applicable to the Services including work health and safety laws and Council's reasonable directions relating to work health and safety.
- (e) *Normally* the Supplier must not subcontract any of the Services. All subcontractors must effect the insurances specified in **clause 11**, as applicable for their portion of the work.
- (f) Insurances must be in place before the Services are commenced.

4. Payment and Invoicing

- (a) *Normally* Council must pay the *Price* within 30 days after receiving the Supplier's invoice, provided that:

- (i) the Goods/Services have been accepted by Council; and
 - (ii) the Supplier's invoice is a valid tax invoice (if the Supplier is required to be registered for GST) and quotes the Order number, ABN and name of the Supplier.
- (b) Payment will be made by electronic funds transfer to the bank account nominated by the Supplier.
 - (c) *Normally*:
 - (i) the *Price* includes GST
 - (ii) Council will pay no more than the *Price* and the Supplier has no right to claim a variation for any reason.

5. Ownership and Risk

- (a) Title in the Goods/Services will pass to Council on delivery.
- (b) The Supplier assumes all risk in the Goods/Services until they are accepted by Council.

6. Warranties

- (a) In addition to the warranties under the Australian Consumer Law and warranties implied by law, the Supplier warrants that:
 - (i) the Goods/Services are of acceptable quality and free from defects in materials and workmanship
 - (ii) the Goods/Services are fit for purpose and/or give the results requested or agreed by Council in the Order, *Contract* or *Offer*
 - (iii) it has a right to provide the Goods/Services and that they do not infringe the intellectual property or moral rights of any person
 - (iv) the Goods/Services come with full title and ownership and are free from any security interest
 - (v) the Goods/Services match descriptions made by the Supplier on packaging and labels, or in promotions or advertising
 - (vi) the Goods are manufactured in the factory or place of origin and match the model number or brand, if specified in the Order, *Contract* or *Offer*; and match any demonstration model or sample provided to Council; and
 - (vii) if applicable, it has spare parts and repair facilities available for a reasonable time after purchase or completion unless Council was informed otherwise.
- (b) The Supplier must provide Council with all relevant manufacturer's and third party warranties in respect of the Goods.

7. Delivery and Acceptance

- (a) *Normally*, Council may within 14 days after the delivery of all or part of the Goods/Services, reject the Goods/Services if the Goods/Services are defective, or do not comply with the requirements of **clauses 2 or 3** or the warranties in **clause 6**. *Normally*, if Council does not notify the Supplier of rejection within the 14 day period, Council will be taken to have accepted the Goods/Services.
- (b) Council may, at any time after acceptance of all or part of the Goods/Services, reject the Goods/Services if the Goods/Services are defective, or do not comply with the requirements of **clauses 2 or 3** or the warranties in **clause 6**, provided that the defect could not have been discovered prior to acceptance.

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- (c) If Council rejects all or part of the Goods/Services the Supplier must comply with a requirement of Council to:
- (i) collect the defective Goods/Services and replace them, at the Supplier's expense; or
 - (ii) repair or rectify any defects in the Goods/Services, at the Supplier's expense; or
 - (iii) refund to Council any amount paid for the defective Goods/Services, including freight costs.

8. Variation or Cancellation for Convenience

- (a) Council may at any time before delivery of the Goods/Services, vary the Order by giving a notice to the Supplier. The parties will endeavour to agree to any reasonable adjustment to the *Price* or delivery timeframe. The Supplier may terminate the Order if it will be unable to provide the Goods/Services as specified in the variation notice or if adjustments to the *Price* or delivery timeframe cannot be agreed.
- (b) Council may at any time before delivery of all or part of the Goods/Services, cancel the whole or part of the Order by giving notice to the Supplier.
- (c) If the Order is terminated or cancelled under this clause, Council is liable to pay for Goods/Services supplied in accordance with the Order up to the date of cancellation, and for the Supplier's reasonable and substantiated costs of materials and other items ordered in connection with the Goods/Services for which the Supplier is legally bound to pay. If applicable, title to and property in those materials and other items will pass to Council on payment. Under no circumstances will the total of all payments to the Supplier under this clause exceed the *Price*.
- (d) The Supplier must mitigate all loss and expenses in connection with the cancellation, variation or termination of the Order and is not entitled to loss of profit.

9. Termination for Cause

Council may terminate the Order without penalty if:

- (a) the Supplier fails to deliver the Goods/Services as specified in the Order or the Supplier notifies Council that the Supplier will be unable to deliver the Goods/Services as specified in the Order; or
- (b) the Supplier fails to remedy a breach of the Order, *Contract* or *Offer* (including a breach of any warranties) within 5 business days of receiving written notice of the breach.

10. Liability and Indemnity

- (a) The Supplier is liable for and indemnifies Council in respect of any claim for loss or damage to any property or death or injury to any person (*Loss*) due to or arising out of the provision of the Goods/Services or the Supplier's act, omission, negligence or breach of the Order, *Contract* or *Offer*. This indemnity does not apply to the extent that the *Loss* arises from Council's default or negligence.
- (b) Neither party is liable to the other for consequential or indirect loss or for loss of profit arising out of or in connection with this Order.

11. Insurance

The Supplier must maintain adequate insurances for the Order and provide Council with proof on request. *Normally*, the Supplier must hold the following insurances:

- (a) Public Liability: \$20 million per occurrence
- (b) For Goods: loss or damage to Goods (including loss or damage in transit) and \$20 million product liability per occurrence
- (c) For Services, as applicable: Works Insurance (*Price* plus 20%); Professional indemnity insurance (\$1 million per occurrence); Workers compensation (as required by law) or, if the Supplier has no employees, personal accident and illness insurance.
- (d) Comprehensive motor vehicle insurance is also required for any vehicles used to provide the Goods/Services.

12. Intellectual Property

- (a) *Normally*, ownership of all intellectual property in any deliverables created under this Order vests in Council, including designs, drawings and reports. Any background intellectual property owned by the Supplier or other person prior to the date of this Order will not vest in Council.
- (b) The Supplier grants a licence to Council to allow it full use of the Goods/Services for their usual purpose. The Supplier warrants that it owns all intellectual property rights necessary to grant this licence.

13. General

- (a) The Supplier must not assign the benefit of the Order without Council's prior written approval.
- (b) No variation of the Order will be binding on Council unless in writing and agreed by Council.
- (c) Council's failure or delay to enforce a condition, or to exercise a right or remedy for breach, is not a waiver of any other breach.
- (d) These conditions will be governed by the law of New South Wales and the parties submit to the jurisdiction in that State.