

# Standard Conditions of Purchase

## DEFINITIONS

"Council" means Central Coast Council, as indicated on the reverse side of these Standard Conditions of Purchase.

"Goods" means all goods, services, products or materials covered by the Purchasing order.

"Purchase Order" means the Councils official Order to which the terms of these conditions apply, whether issued by hand, mail, facsimile or electronically.

"Seller" means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued and includes its servants, agents and subcontractors.

## 1. CONTRACT

- (a) The acceptance by the Seller named in the Purchase Order on the reverse side of these Standard Conditions of Purchase shall constitute a binding contract between the Seller and the Council on the terms of these Conditions ("the Contract").
- (b) No document, representation or statement except these Conditions shall form part of the Contract unless the Council agrees in writing.
- (c) Any variation of the Contract shall be of no effect unless in writing and signed by both the Council and the Seller.

## 2. PRICE

The Price includes, as appropriate, the cost of delivery free into store to the address nominated in the Purchase Order ("the Nominated Address") and insurance costs, duties, taxes (except GST) and packing costs and any other costs and expenses associated with manufacturing, delivering and supplying the Goods and Services.

## 3. GOODS AND SERVICES TAX ("GST")

- (a) The Council must reimburse the Seller for the amount of any GST payable in respect of any supply made under the Contract, PROVIDED THAT the Seller must first provide the Council with a tax invoice for the supply. The Council may reject without payment any invoice that is not a tax invoice.
- (b) If there is an adjustment event in relation to the supply:
  - (i) the Seller must refund to the Council the amount by which the amount reimbursed pursuant to clause 3(a) exceeds the adjusted GST on the supply; or
  - (ii) the Council must pay to the Seller the amount by which the adjusted GST on the supply exceeds the amount reimbursed pursuant to clause 3(a)
- (c) In this clause 3, the expressions "supply", "tax invoice" and "adjustment event" have the same meanings as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 4. DELIVERY

- (a) The Seller must deliver the Goods to and supply the Services at the Nominated Address.
- (b) The Seller shall be deemed not to have delivered the Goods to or supplied the Services unless it obtains a receipt or signed delivery docket from an authorised agent or employee of the Council.

## 5. TIME

- (a) If a time for delivery of the Goods or supply of the Services is stipulated in the Purchase Order, that time (as varied pursuant to this clause 5) shall be of the essence of the Contract.
- (b) If the Goods are not delivered or the Services not supplied by the time stipulated in the Contract, (as varied pursuant to this clause 5) the Council may, without prejudice to any other rights and remedies, rescind the Contract, unless the delay is caused by factors outside the reasonable control of the Seller, as determined by the Council.
- (c) The Council shall not be liable to the Seller in respect of any cost, expense, loss or damage whatsoever incurred or suffered by the Seller as a direct or indirect result of the rescission of the Contract pursuant to clause 5(b).

## 6. ACCEPTANCE AND PASSING OF RISK AND PROPERTY

- (a) Risk in the Goods shall pass to the Council on acceptance of the Goods, which shall be deemed to be accepted by the Council on the 7th day after delivery if the Council has not advised the Seller that the Goods are not in conformity with the Contract.
- (b) Property in the Goods shall pass to the Council on delivery of the Goods to the Nominated Address or payment by the Council, whichever is earlier.

## 7. PAYMENT

- (a) The Seller shall be entitled to submit to the Council a claim for payment of the amount due to the Seller under this Contract ("Payment Claim") upon the complete delivery of the goods or service stipulated in the Contract.
- (b) The Payment Claim shall be for the Price, (as amended) for the value of the work performed and materials supplied under the Contract.
- (c) Each Payment Claim must be supported by evidence of the amount due to the Seller and such other information as the Council shall reasonably require.
- (d) Without limiting the Councils rights under any other provision of the Contract, the Council may deduct from or set off against any moneys which may be or thereafter become payable by the Council to the Seller:
  - (i) any debt due from the Seller to the Council; and
  - (ii) any claim which the Council may have against the Seller under or by virtue of any provision of the Contract or otherwise at law or in equity.
- (e) If the Seller submits a claim for payment under the Building and Construction Industry Security of Payment Act 1999 (NSW), then any Payment Certificate issued by the Council in response thereto is deemed to be a payment schedule served by the Council for the purposes of that Act.
- (f) The Council shall pay the Seller within 30 days of receipt of a valid Payment Claim.
- (g) For the purposes of the Building and Construction Industry Security of Payment Act 1999 (NSW), the parties agree that the authorised nominating authority to whom any adjudication application may be made is the Institute of Arbitrators and Mediators Australia."

## 8. INSURANCE

- (a) The Seller must, until acceptance of the Goods by the Council or completion of the performance of the Services, at its own cost, insure the Goods and any Materials provided by the Council to the Seller pursuant to clause 12 for any loss of or damage to the Goods and Materials.
- (b) The Seller warrants that it has, and will maintain a public and products liability insurance policy for at least \$5 million for any one occurrence.
- (c) The Seller shall maintain adequate insurance for all Goods and Services pursuant to the Purchase Order.

## 9. GUARANTEE AND INDEMNITY

- (a) The Seller guarantees the Goods and Services against any omissions or defects or other failures ("Failure") arising from faulty design, materials or workmanship, or any other Failures which render them unsuitable for the Council's requirements, which occur at any time from the date of acceptance of the Goods or completion of the Services until the date 12 months after the date the Goods or Services are first put into use.
- (b) Pursuant to clause 9(a) the Seller must, at the option of the Council:
  - (i) refund the Price;
  - (ii) repair, modify or replace at the Seller's expense, Goods which are unsuitable for the Council's requirements; and
  - (iii) supply again Services which in the opinion of the Council are not supplied in accordance with the Contract; and
  - (iv) the Seller shall be liable for any resulting costs and expenses incurred by the Council or the Seller.
- (c) The Council may, at its option, have the repair, modification or replacement of the Goods or resupply of the Services referred to in clause 9(b) undertaken by a third party or undertake the repair, modification, replacement or resupply itself, and all resulting costs and expenses shall be borne by the Seller.
- (d) The Seller shall indemnify and keep indemnified the Council from and against all actions, claims, costs, expenses and damages in respect of:
  - (i) loss of or damage to property of any kind of the Council, or damage of any kind suffered by the Council, or
  - (ii) personal injury to any person or loss of or damage to any property, arising out of or by reason of anything done or not done by the Seller in respect of the supply of the Goods or Services

## 10. WORK HEALTH AND SAFETY

The Seller shall undertake the work under this Order in accordance with the requirements of the Work Health & Safety Act 2011(NSW) and associated Regulations. The Seller is in the same way responsible for the activities of all subcontractors and suppliers.

## 11. WARRANTY

The Seller warrants to the Council that:

- (a) the Goods and Services correspond to the description in the Contract and conform to all specifications, drawings, samples and descriptions provided by the Council to the Seller;
- (b) the Goods and Services are fit and sufficient for the purpose for which they are intended;
- (c) the Goods and Services are of the quality specified (or, if no quality is specified, the best merchantable quality);
- (d) the Goods are free of all defects and will operate satisfactorily and reliably under all conditions;
- (e) the Goods are free of all liens and encumbrances and the Seller has good title to them;
- (f) the supply of the Goods and Services by the Seller to the Council and the licence granted by the Seller pursuant to clause 14 does not infringe the intellectual property rights of any third party; and
- (g) the Seller shall strictly comply with all applicable laws and all notices, directions and requirements of the Council from time to time.

## 12. MATERIALS SUPPLIED BY COUNCIL

- (a) The Council must provide to the Seller all designs, specifications, drawings, technical information, equipment and other materials specified in the Contract to enable the Seller to produce the Goods or supply the Services (the Materials).
- (b) All Materials, remain the property of the Council.
- (c) The Seller must not use the Materials for any purpose except the supply of the Goods and Services to the Council.
- (d) The Council shall have no liability whatsoever to the Seller in respect of or in connection with any failure by the Council to provide any Materials.

## 13. DESIGN AND SPECIFICATIONS

If the Council reviews design drawings, specifications, construction drawings or workshop drawings or any other documents prepared by or on behalf of the Seller, gives any approval, direction, or instruction to the Seller or provides information to the Seller, this shall not relieve or reduce the Seller's sole responsibility for the supply of the Goods and performance of the Services in accordance with the Contract, shall not release the Seller from its obligations under clauses 9 and 10, and shall not restrict the Council's rights and remedies under the Contract or constitute acceptance by the Council that the Seller has complied with its obligations under the Contract. The Council assumes no responsibility or duty of care whatsoever to the Seller, notwithstanding any such review, approval, direction, instruction, or provision of information.

## 14. CONFIDENTIALITY

The Seller shall keep confidential the terms of the Contract and the Materials and shall only disclose them as required by law and to those of its employees, servants or agents necessary to enable the Seller to perform the Contract.

## 15. INTELLECTUAL PROPERTY

- (a) The Seller hereby grants to the Council a perpetual non-exclusive, non-transferable, worldwide, royalty-free licence in respect of intellectual property in the Goods and Services to the extent reasonably necessary to use the Goods and Services for their intended purpose and ancillary and related purposes.
- (b) The title to and Intellectual Property Rights in all material created by the Seller and brought into existence after the date and as a result of this Contract ("Contract Material") shall vest in the Council.

## 16. BREACH AND TERMINATION

- (a) The Council may terminate the Contract by written notice to the Seller:
  - (i) if the Seller is in breach of a term of the Contract and fails to remedy the breach within 14 days of the receipt by it of a notice in writing from the Council specifying the breach and requiring the Seller to remedy it;
  - (ii) if the Council is of the reasonable opinion that the Seller is unable or unwilling to comply with its obligations under the Contract with due diligence or in a competent manner; or
  - (iii) if the Seller becomes bankrupt or makes an assignment of his estate for the benefit of his creditors or makes a composition or other arrangement with his creditors or if, being a company, the Seller goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent over all of the assets of the Seller.
- (b) Termination of the Contract pursuant to this clause shall be without prejudice to the rights of either party accruing before termination.
- (c) The Seller shall be liable to the Council for any loss whether direct, consequential, economic or otherwise suffered by the Council and arising out of or in connection with such termination or prior breach.
- (d) The Council shall not be liable to the Seller for any loss, whether direct, indirect, consequential, economic or otherwise, suffered by the Seller and arising out of or in connection with termination of the Contract pursuant to this clause 15
- (e) If the Seller breaches a term of the Contract and the Council does not terminate the Contract pursuant to this clause 15, the Council shall not be bound to perform its obligations under the Contract until the breach is remedied by the Seller.

## 17. IMPLIED WARRANTIES

All warranties, conditions, promises, undertakings, covenants and other provisions implied by law relating to the Goods and Services or their supply and delivery form part of the Contract and these Conditions do not exclude, restrict or modify the application to the Contract of any provision of the Competition and Consumer Act 2010 or State Fair Trading Acts or their equivalents.

## 18. ASSIGNMENT

The Seller must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interest or obligations under the Contract without the Council's prior written consent, which consent may be granted, withheld or granted subject to conditions in the Council's absolute and unfettered discretion.

## 19. SUB-CONTRACTING

- (a) Where Council consents to the Seller sub-contracting any work pursuant to the Purchase Order, the Seller remains responsible for the whole of the work to be performed pursuant to the Purchase Order or any obligation contained therein.
  - (i) A copy of each sub-order shall be provided by the Seller to the Council immediately upon their issue.
  - (ii) Council reserves the right to inspect all sub-contracted work.

## 20. DISPUTE RESOLUTION

Any dispute between the Council and the Seller arising out of or in any way connected with the Contract which is not resolved by the Council and the Seller within 14 days after service of written notice of the dispute (stating that it is a notice given under this clause 19) by either party on the other party shall be referred for decision to an arbitrator. If the Council and the Seller are unable to agree on the appointment of an arbitrator within 30 days after service of the written notice of the dispute, either party may request the President for the time being of the Australian Institute of Arbitrators to appoint an arbitrator. The arbitration shall be conducted in accordance with the Rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators Australia.

## 21. GENERAL

- (a) If any provision or part of any provision of the Contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision of the Contract.
- (b) The Contract shall be governed by the law of New South Wales and the parties agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them.