

WAIKATO DISTRICT COUNCIL STANDARD PURCHASE ORDER TERMS AND CONDITIONS

1 APPLICATION

These terms and conditions apply to any purchases made by the Council to the exclusion of any other terms and conditions contained or referred to in any acknowledgement or order, form of contract, letter or other communication from the Supplier. If the Council and the Supplier negotiate separate terms and conditions, and such terms are agreed in writing by the Council and the Supplier, those terms and conditions will override these terms and conditions.

2 DEFINITIONS

In these terms and conditions:

“**Contract**” means the PO, these terms and conditions, Specifications (if any) and any other terms agreed in writing.

“**Council**” means the Waikato District Council.

“**Good Industry Practice**” means that degree of skill, care, prudence and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of goods or services in the same type of undertaking as that of the Supplier under the same or similar circumstances.

“**Goods**” means the goods specified in the PO/Specifications to be provided by the Supplier.

“**PO**” means the purchase order placed by the Council for the supply of Goods or Services.

“**Services**” mean the services specified in the PO/Specifications to be performed by the Supplier.

“**Specification(s)**” means the technical and/or any other requirements (if any) in respect of the purchase, provided by the Council to the Supplier.

“**Supplier**” means any person, including a Contractor or Consultant, providing Goods or Services to the Council.

“**Working Day**” means any day other than a Saturday, Sunday, or Public Holiday in Hamilton, New Zealand.

3 ACCEPTANCE OF ORDER

- 3.1 A PO is an offer by the Council to purchase the Goods or Services, that is deemed to be accepted upon the Supplier agreeing to or commencing to supply the Goods or Services.
- 3.2 The Council can withdraw the PO at any time prior to acceptance by the Supplier.
- 3.3 These terms and conditions are deemed to be accepted upon the Supplier agreeing to or commencing to supply the Goods or Services.

4 PRICE

- 4.1 The price stated in the PO is exclusive of GST and any duty, but is otherwise all inclusive of freight, insurance and any other charges or taxes.
- 4.2 Any variation to price must be notified in writing prior to acceptance of the PO by the Supplier.
- 4.3 Council may, acting reasonably, agree to vary the price provided that such variation is based on direct and reasonable costs actually incurred or anticipated to be incurred by the Supplier.
- 4.4 Should Council refuse to accept a price variation, the disputes resolution process as set out in clause 19 shall apply.
- 4.5 The price must be in New Zealand dollars.

5 INVOICING AND PAYMENT

- 5.1 Invoices should be sent to Waikato District Council, via email finance@waidc.govt.nz.
- 5.2 If correct tax invoices are received by the 5th Working Day of the month, undisputed amounts due from the Council will be paid to the Supplier by the 20th day of the following month, for any Services completed or Goods supplied in the preceding month. Councils preferred method of payment is direct credit by electronic file transfer.
- 5.3 Council will not be liable for late payment penalties if payment is delayed for any reason.
- 5.4 Invoices should show a breakdown of all labour, materials and any mileage.
- 5.5 Invoices for part orders will not be accepted unless progress payments are agreed to in advance of the Services commencing or Goods being provided.
- 5.6 The Council shall deduct withholding tax where required by law.

6 DELIVERY AND IDENTIFICATION

- 6.1 The Supplier must have a valid PO number before providing any Goods or Services to the Council.
- 6.2 The PO number must be shown on all packages, delivery notes, invoices and correspondence.
- 6.3 Where the Council has not named a place of destination, the Supplier is responsible for contacting the Council to obtain delivery instructions.

- 6.4 Each consignment shall be accompanied by a delivery note stating the description of the Goods.
- 6.5 Partial delivery may be accepted at the Council’s discretion.
- 6.6 All Goods or Services shall be delivered within the timeframe specified in the PO. Should any delay occur, the Supplier must ensure that the Council is notified as early as possible, and before the date of delivery as shown on the PO. The Council reserves the right to void or cancel the order if not delivered within the agreed time frame.
- 6.7 All Goods must be adequately packaged to prevent deterioration or damage whilst in transit.
- 6.8 If any Goods are not accepted by Council, the removal of any Goods delivered is at the obligation and cost of the Supplier.
- 6.9 The Supplier must obtain from the Council an acknowledgment of delivery of all orders.

7 QUALITY GOODS

- 7.1 The Council reserves the right to have the Goods inspected or tested before, on or after delivery, by an officer appointed by the Council, and the Supplier shall facilitate inspection or testing when required.
- 7.2 The Council may reject any Goods that are of inferior quality, contrary to the Specifications for the Goods, in an unsatisfactory condition, or not functioning in the way they are designed to function.
- 7.3 For any such rejected Goods the Supplier must, at the Council’s sole option and at the Supplier’s sole risk and expense, either:
 - (a) repair or replace the Goods and reimburse the Council for any loss of function attributable to the Goods; or
 - (b) remove the Goods and reimburse the Council in full for any payments made by the Council in respect of the Goods.

8 STANDARD OF SERVICES

- 8.1 The Supplier will exercise due skill and care in providing the Services to the Council in accordance with any Specifications and requirements which the Council advises and in accordance with Good Industry Practice using appropriately trained, qualified and experienced personnel. If the Council considers, acting reasonably, that the Services have not been provided to the required standard then, without limiting any other rights it has under law, the Council may:
 - (a) Reduce the price payable for such Services; or
 - (b) Rectify or engage another person to rectify the Services, with the cost of such work being a debt due from the Supplier to the Council payable on demand.

9 INTELLECTUAL PROPERTY

- 9.1 Any intellectual property created by the Supplier during the performance of the Services is the exclusive property of the Council.
- 9.2 The Council must be informed if anything used to deliver the Goods or Services belongs to any third party. The Supplier must ensure that the Council has all the necessary rights (and documentation) to fully enjoy the full benefits of the Goods or Services.
- 9.3 The Supplier warrants to the Council that ownership (where intended), possession, use, modification or resale of any deliverable supplied will not infringe any third-party rights, and the Supplier will indemnify the Council from any related claims or proceedings. The Council may freely participate in any infringement proceedings.

10 TITLE AND RISK

- 10.1 Title does not pass to the Council until the earlier of:
 - (a) inspection having occurred with confirmation in writing by the Council of its acceptance of the Goods, or
 - (b) the expiry of 5 Working Days after delivery to the address specified in the PO.
- 10.2 Every risk to any deliverable remains with the Supplier until completion of delivery and acceptance of the Goods. Anything involved in delivery or acceptance is provided at the Supplier’s every risk and cost.

11 RELATIONSHIP

- 11.1 The Supplier is and shall remain at all times an independent contractor and is not the servant, employee, partner or agent of Council.

12 INDEMNITY

- 12.1 The Supplier shall indemnify the Council, its officers, employees and agents against any loss, damage or expense suffered or incurred by the Council as a direct or indirect consequence of:
 - (a) any act, error or omission by the Supplier and for which the Supplier is legally liable; or
 - (b) any breach by the Supplier of any warranty or other obligation in this Contract; or

- (c) any liability incurred by Council in respect of injuries to any third party or damage to property which may arise out of, or in consequence of, the performance of the Supplier's obligations under this Contract.

12.2 The indemnity shall survive the termination of this Contract.

13 INSURANCE

- 13.1 The Supplier is to maintain, at the Supplier's cost, Public Liability Insurance for a minimum value of \$2,000,000.00 at all times during provision of the Goods or Services.
- 13.2 While providing any professional services to the Council, the Supplier is also to maintain, at the Supplier's cost, Professional Indemnity Insurance for a minimum value of \$1,000,000.00.

14 WARRANTIES

- 14.1 The Supplier must ensure that any Goods delivered are:
 - (a) designed, manufactured, delivered and operated in compliance with all applicable user requirements, Specifications and standards;
 - (b) new and unused on delivery unless specified otherwise in each case by the Council;
 - (c) free from any defects and fit for the purpose intended by the Council; and
 - (d) compatible with the other goods available from the Supplier.
- 14.2 If not specified, the Supplier warranty and guarantees to the Council for any deliverable will be for the greater of; 12 months, or the warranty period generally available to the Supplier customers.
- 14.3 Each warranty is to cover any defective labour, materials and performance. The Supplier will, to all extent possible, pass on to the Council the benefit of any warranty or guarantee received from any other person in respect of deliverables supplied, so that the Council may have recourse against those persons.

15 LEGAL COMPLIANCE

- 15.1 The Supplier will ensure that the provision of all Goods and Services is in accordance with all laws, regulations, bylaws, industry codes of practice, ethical and professional standards, and licensing, consent and permit requirements that are applicable to the Supplier's supply of the Goods or performance of the Services.

16 PUBLICITY AND REPUTATION

- 16.1 The Supplier will not do anything which brings, or would be likely to bring, the Council into disrepute.
- 16.2 The Supplier will not represent or publicise in any way to anyone that it is a Supplier to the Council. The Supplier will not allow media releases or advertising that names or suggests the Council, without the Council's prior written consent.

17 CONFIDENTIALITY

- 17.1 The Supplier will keep confidential and secure, and not misuse, any information of the Council which is marked or indicated as confidential, or would reasonably be expected to be proprietary, commercially sensitive or confidential.
- 17.2 Disclosure and use of information by either party is allowed to the extent required by law, or to the extent necessary to perform the Contract.
- 17.3 The Supplier acknowledges that the Council is subject to the Local Government Official Information and Meetings Act 1987 (LGOIMA). The Council is obliged to disclose Confidential Information under that Act if so requested, unless there is good reason under the terms of that Act to withhold that information.
- 17.4 This clause 17 shall survive the expiration or termination of this Contract.

18 HEALTH AND SAFETY

- 18.1 The Supplier will comply with all relevant health and safety legislation, regulations, applicable codes of practice and standards, the Council's health and safety policies and procedures and any standard operating procedures which may be connected with the provision of the Goods or Services.
- 18.2 The Supplier must ensure it:
 - (a) 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 the Council, workers, visitors, subcontractors, service providers, the public and any visitors to any area under the control of the Supplier;
 - (b) Comply with all reasonable directions given by the Council in relation to the health and safety in connection with this Contract.

19 DISPUTES

- 19.1 If any dispute arises in connection with Contract either party may trigger the provisions of this clause by giving written notice of the dispute to the other party (**Disputes Notice**).
- 19.2 The parties shall endeavour to resolve the dispute within ten (10) Working Days of receipt of the Disputes Notice through negotiations.
- 19.3 If the dispute is not resolved through negotiations, either party may, within 10 Working Days of receipt of the Dispute Notice, request mediation which shall be conducted in Hamilton and at a cost which is to be shared equally between the parties with each party meeting their own costs.
- 19.4 The Supplier must continue to perform the Services until the dispute is resolved and unless the Council directs otherwise.
- 19.5 Neither party may commence legal proceedings in relation to a dispute until this process has been exhausted (however, nothing in this clause restricts the right of either party to seek injunctive relief or the rights to terminate or suspend this Contract).

20 CLAIMS AGAINST WAIKATO DISTRICT COUNCIL

- 20.1 In no event will the Council be liable for any consequential loss, damage or expense, including any loss of profit. Any claim against the Council must in writing and delivered within three (3) months of the event to which it relates, and no claim shall exceed the value of the PO to which it is connected.

21 SUSPENSION AND TERMINATION

- 21.1 If the Council reasonably considers that the Supplier has breached or failed to comply with any clause of this Contract, or has an inability to perform the required obligations, the Council shall give notice to the Supplier of such a breach or failure. If, within 10 Working Days of receipt of the written notice, the Supplier has not remedied the breach or failure, the Council may suspend or terminate the Contract by notice in writing to the Supplier and may select an alternative supplier of the Goods or Services. In this case, any additional costs incurred by the Council may be recovered from the original Supplier.
- 21.2 The Council may terminate the Contract by providing the Contractor with 30 days' written notice at any time.
- 21.3 Termination or suspension of the Contract is without prejudice to the rights and obligations of the Parties' accrued up to and including the date of termination or suspension.

22 GENERAL

- 22.1 The Supplier must ensure that Goods and Services supplied meet high environmental standards in their production and operational performance, consistent with ISO 14001.
- 22.2 The Supplier must not assign, subcontract or transfer any of its rights obligations under this Contract without the prior written consent of the Council.
- 22.3 The Council and the Supplier will act in good faith towards one another, and do all things reasonably required to ensure the full benefit of this agreement.
- 22.4 No variation or waiver of any of the above terms and conditions shall be valid or take effect, unless agreed to in writing by the Council.
- 22.5 Termination or expiration of the Contract will not affect the rights and obligations of the parties as are intended to survive the termination or expiration.