

Standard Purchase Order Terms and Conditions

1. Contract

- 1.1 These Terms and Conditions together with any specifications, request for quote documents and/or Special Conditions attached or incorporated (including without limitation the Purchase Order) constitute the entire terms of the agreement governing the provision of the Services specified in the Purchase Order from the Contractor to the Council ("**the Contract**")
- 1.2 Any addition or variation to the Contract must be in writing and signed by the Council and will have status as a Special Condition to the Terms and Conditions.
- 1.3 Acceptance of the Purchase Order by the Contractor (whether express or implied and including as may be evidenced by the Contractor's conduct in providing the Services) is considered to be acceptance of the Contract.

2. Order of Precedence

- 2.1 The order of precedence of the Contract documents is:
 - 2.1.1 the Special Conditions referred to in clauses 1.1 and 1.2;
 - 2.1.2 the request for quote documents, including any attached '*General Conditions of Contract*'; and
 - 2.1.3 the Purchase Order including any attached specifications and these Terms and Conditions.
- 2.2 If there is any inconsistency between the provisions of the Contract documents, then the inconsistency is to be interpreted in accordance with the order of precedence of the Contract documents specified in clause 2.1 (by way of the inconsistent provision being read down accordingly or where necessary, severed from the relevant document that is lower in the order of precedence, but only to the extent necessary to resolve the inconsistency).

3. Scope of Contract

The Contractor must supply the Services:

- 3.1 as specified in the Contract including, where relevant, as to sizes, quantities, quality and types;
- 3.2 for the amount or at the rates of charge referred to in the Contract;
- 3.3 diligently, with the level of care, skill, knowledge and judgment required and in accordance with best industry practice; and
- 3.4 otherwise in full compliance with the Contract.

4. Pricing

The price set out in the Contract is not negotiable. Unless stated otherwise in the Contract, prices include all packaging, marking, handling, freight and delivery, insurance, GST and any other applicable costs and charges.

5. Compliance with Laws

In providing the Services the Contractor must:

- 5.1 comply with all relevant laws (including without limitation Acts of Parliament, Regulations, Rules, Codes, Court Orders, statutory notices or directions, Industry Awards and/or Agreements and By-Laws); and
- 5.2 comply with the requirements of all authorities having jurisdiction by law over any matter affecting the Services; and

- 5.3 pay all fees and obtain all required approvals, certificates and licenses as necessary in connection with the Services; and

- 5.4 ensure that any employees engaged in the delivery of the Services hold all qualifications, licences, registrations and permits required by law and are adequately trained and are competent to carry out their duties and perform their functions in relation to the provision of the Services.

6. Delivery of the Services

The Services must be delivered to/at such locations and at such time as nominated by the Council and specified in the Contract. Where the Services include the supply of goods, delivery is not deemed to have occurred unless all the goods specified in the Purchase Order are received and accepted by the Council's representative.

7. Rejection of Services

The Council may reject any of the Services that do not comply in every respect with the Contract. The Council is not required to make payment to the Contractor for any rejected Services.

8. Goods

- 8.1 If the Services include the supply of goods, the goods are at the Contractor's risk until delivered to the Council at the time and place specified in the Contract.

- 8.2 Upon delivery of the goods, unless they are rejected by the Council (either at the time of delivery or subsequently if the goods are found not to comply with the Contract), ownership passes unconditionally to the Council free of any encumbrances.

- 8.3 The Council is only obliged to accept delivery of goods that comply with the Contract. If the goods delivered do not comply with the Contract and are rejected by the Council, the Contractor must (at the Contractor's cost and expense), remove the rejected goods from the Council's premises. In the event of any default by the Contractor of its obligation under this clause 8.3, the Council may return the rejected goods to the Contractor and the costs incurred in doing so may be recovered as a debt from the Contractor or offset against any amount the Council otherwise owes to the Contractor (whether under this Contract or otherwise). All freight, insurance and other charges in connection with the delivery of goods rejected by the Council and must be paid and borne by the Contractor.

9. Terms of Payment

- 9.1 Following the delivery of the Services, the Contractor is required to issue a tax invoice to the Council that must:

- 9.1.1 specify the Council's order number as set out on the Purchase Order; and
- 9.1.2 state the nature of the Services and, where relevant, the type and number of goods delivered.

- 9.2 Subject to the Services being delivered and accepted by the Council, the Council must pay the price specified in the Contract to the Contractor within 30 days from the end of the month that the tax invoice is dated.



10. Work Health Safety

10.1 The Contractor must ensure that at all times the Contractor and any employees or sub-contractors engaged in the provision of the Services identify and take all precautions as necessary to comply with the respective duties under the *Work Health and Safety Act 2012*.

10.2 The Contractor must immediately comply with any and all reasonable directions of the Council regarding work health and safety in relation to the delivery of the Services at the Council's premises or at any workplace for which the Council is responsible.

11. Intellectual Property

11.1 Subject to this clause 11, the intellectual property in all Services provided pursuant to the Purchase Order vests in the Council. The Contractor will, where required to give effect to this clause, use its best endeavours to ensure that any person, including employees, agents, and subcontractors, engaged by it in the provision of the Services agree to assign to the Council all the intellectual property in the Services.

11.2 Nothing in the Contract affects or in any way alters the Contractor's ownership of or rights in relation to any pre-existing intellectual property.

12. Samples

The Council may require the Contractor, as a precondition to the delivery of the Services (or any part of them), to supply a sample of the Services for approval by the Council. In the event that such a sample is produced and approved by the Council any delivery of the Services for which a sample was provided must be consistent with the size (where relevant) and nature and quality of the approved sample.

13. Warranty

The Contractor warrants that all of the Services delivered to the Council:

- 13.1 conform to the relevant description contained in the Contract;
- 13.2 are of good merchantable quality and fit for purpose
- 13.3 are new (unless otherwise specified);
- 13.4 are delivered free from all liens, charges and encumbrances;
- 13.5 will be delivered by the due delivery date specified in the Contract.

These warranties are in addition to any warranty or guarantee provided by the Contractor in respect of the Services or otherwise implied by law.

14. Indemnity

The Contractor indemnifies and holds harmless the Council against all damage, injury, loss, costs, charges and expenses whatsoever incurred by the Council as a result of any breach by the Contractor of the warranties specified in clause 13.

15. Termination

The Council reserves the right to terminate the Contract if the Services are not delivered on or before the due date specified in the Contract or if the Services (or any part thereof) are not in compliance with the Contract.

16. Assignment

The Contractor shall not, without the prior written approval of the Council, assign the Contract or assign, mortgage, charge, encumber any of the money payable under this Contract.

17. Part Acceptance of Services

Where the Council has accepted the Services (or any part of them) the Council shall pay the Contractor that part of the purchase price attributable to the portion of the Services accepted.

18. Confidentiality

The Contractor agrees to keep confidential to the extent permitted by law, all information provided (in whatever form) by the Council in relation to the Services excluding any information that is in the public domain other than as a result of the conduct of the Contractor.

19. No Waiver

No failure or delay by a party to exercise any right or remedy shall operate as a waiver and nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or of any right or remedy.

20. Time of the Essence

Time is of the essence for any date or period stipulated in the Contract.

21. Ombudsman Act

The *Ombudsman Act 1972* empowers the Ombudsman to investigate any "administrative act", which includes an act done in the performance of functions conferred under the Contract. The Contractor agrees to comply with all of its obligations as may arise under the *Ombudsman Act 1972* in connection with the Contract.

22. ICAC Act

The Contractor is considered a 'public officer' for the purposes of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

23. Council as a regulator

The Council enters into the Contract as a customer of the Contractor and not in any other capacity. The Contract does not fetter or evidence the exercise of any regulatory function or power the Council has now or in the future.

24. General Matters and Definitions

24.1 **Contractor** means the person listed on the Purchase Order as supplying the Services to the Council.

24.2 **Council** means the City of Tea Tree Gully.

24.3 **GST** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999.

Purchase Order means an order for the supply of Services issued by the Council.

24.4 **Services** means the services described in the Purchase Order to be provided in accordance with these Terms and Conditions, and includes, as required, the performance of works and/or the supply of goods.

24.5 Unless otherwise provided, all references to sums of money shall be in Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities, dimensions and units shall be in terms of Commonwealth legal units.

24.6 The laws in force in the state of South Australia apply to this Contract and the parties irrevocably submit to this jurisdiction.

