

STANDARD CONDITIONS FOR PURCHASE OF WORKS, GOODS AND/OR SERVICES

1. AGREEMENT

1.1 This "Agreement" comprises:

- (a) the Request for Quotation (if any), the Purchase Order, these standard conditions, the Specifications and Drawings, and any other documents referred to in the Request for Quotation; and
- (b) any express written agreement between the parties in relation to the Request for Quotation as a result of negotiations entered into prior to the date of the Purchase Order.

1.2 Council may amend the Agreement by publishing updated terms on its website at <https://www.whittlesea.vic.gov.au/for-business/tenders/terms-of-purchase/>

1.3 The Supplier is deemed to have examined all documents comprising the Agreement, obtained all other necessary information, determined the nature and extent of the Supply and assessed the amount of temporary works, materials, labour and plant necessary to complete the Supply.

1.4 The order of precedence of the contract documents shall be as follows:

- (a) any express written agreement referred to in clause 1.1(b);
- (b) the Purchase Order;
- (c) these standard conditions;
- (d) the Specifications and Drawings; and
- (e) any other documents referred to in the Request for Quotation.

1.5 If the Supplier finds an inconsistency in or between the documents comprising the Agreement, the Supplier shall notify Council in writing as soon as possible. After receiving such notice, Council will direct the Supplier how the inconsistency is to be resolved based principally on the order of precedence identified in clause 1.4.

1.6 The Supplier is deemed to have accepted the terms and conditions in the Agreement if the Supplier does not dispute the acceptance of the Purchase Order and these standard conditions within 5 days of receipt of the Purchase Order.

2. DEFINITIONS AND INTERPRETATIONS

2.1 In the Agreement, the following words have these meanings unless the contrary intention appears:

- (a) "**Commencement Date**" means the date that the Supply is to commence as stated in the Request for Quotation, or if no date is stated in the Request for Quotation, the Commencement Date will be the Purchase Order date.
- (b) "**Council**" means the City of Whittlesea ABN 72 431 091 058.
- (c) "**Completion Date**" means the Delivery Date or any other date notified by Council to the Supplier in accordance with clause 15.1.
- (d) "**Delivery Date**" means the date that the Supply is to be made to the Site or to Council as specified in the Request for Quotation (or if none stated, in the Purchase Order) or as otherwise directed or specified by Council.
- (e) "**Intellectual Property**" means all present and future rights in the nature of intellectual or industrial property including but not limited to patents, copyright, designs, and trade marks, whether or not registered, registrable or patentable.
- (f) "**PPSA**" means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.
- (g) "**Purchase Order**" means the document identified as such.
- (h) "**Purchase Price**" means the amount stated in the Purchase Order.
- (i) "**Request for Quotation**" means the document identified as such.
- (j) "**SOP Act**" means the *Building and Construction Industry Security of Payment Act 2002* (Vic).
- (k) "**Specification and Drawings**" means the documents attached to and forming part of the Agreement as identified in the Request for Quotation (or if none stated, the item description stated in the Purchase Order).

(l) "**Site**" means the site at the address stated in the Request for Quotation (or if none stated, the Purchase Order).

(m) "**Supplier**" means the entity to whom the Purchase Order is addressed.

(n) "**Supply**" means the works, goods and/or services specified in the Request for Quotation (or if none stated, the Purchase Order).

3. SCOPE

3.1 The Supplier must provide, perform or deliver the Supply to Council in accordance with the Agreement and in compliance with all applicable laws and standards.

3.2 The Supply supplied must be (and it is a condition that the Supply is):

- (a) where the Supply relates to works or goods:
 - (i) consistent with any description and details of the Supply;
 - (ii) consistent with each sample provided (if any) to and approved by Council;
 - (iii) capable of use by Council and any third party if on-sold without infringing any Intellectual Property Right or other right of any third party;
 - (iv) of merchantable quality;
 - (v) free from defects;
 - (vi) fit for their intended purpose (as may be determined by Council);
 - (vii) entitled and have the right to sell the works or goods; and
 - (viii) compliant with all recognised standards and laws applicable in the jurisdiction where the works or goods are supplied; and/or
- (b) where the Supply relates to the provision of services:
 - (i) to an appropriate and reasonable standard having regard to the circumstances; and
 - (ii) compliant with any service level standards for the time being notified by Council.

3.3 The Supplier acknowledges that nothing in the Agreement creates an exclusive supply or service agreement or arrangement between Council and the Supplier and that Council may procure works, goods or services (whether similar to the Supply or otherwise) from other suppliers at any time without reference to the Supplier.

3.4 The Council may at any time give written notice to the Supplier proposing a variation to the Supply. The Supplier must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply to the varied Supply. The Council may accept the varied Purchase Price proposal but in the absence of such acceptance the Agreement will continue as if no proposal under this sub-clause had been made.

4. PERFORMANCE

4.1 The Supplier must provide, perform or deliver the Supply to the Site in accordance with any instructions set out in the Request for Quotation (if any) and Purchase Order (including, where the Supply is or relates to a supply of goods, any handling requirements of the goods) or given by Council on or before the Delivery Date. Time is of the essence for the Agreement.

4.2 The Supplier must commence the Supply on the Commencement Date and complete the Supply by the Completion Date.

4.3 The Supplier warrants that it has the skill, ability, experience, equipment and personnel to provide, perform or deliver the Supply as required under the Agreement.

4.4 Upon request by the Council, the Supplier will promptly provide the Council with a written report giving details of the status of the Supply, including tasks completed, tasks yet to be completed and estimated completion dates.

5. PERSONNEL

5.1 The Supplier must ensure that:

- (a) it employs or engages a sufficient number of personnel to enable it to provide the Supply in accordance with the Agreement;
 - (b) its personnel are appropriately trained, licensed, accredited and experienced in undertaking any activity, function or task in connection with the Supply; and
 - (c) its personnel are supervised by a person who has the requisite competence, experience, knowledge and qualifications to undertake that supervision.
- 5.2 If required by Council, the Supplier must ensure that all Supplier personnel attend and participate in any induction training at the Site.
- 5.3 If the conduct of any Supplier personnel results in or contributes to any non-compliance with the Agreement or the behaviour of any Supplier personnel is not otherwise acceptable to Council, Council may, by notice, in writing, in its absolute and sole discretion, direct the Supplier to remove that Supplier personnel and the Supplier must ensure that any such Supplier personnel ceases to undertake any activity, function or task in connection with the provision of the Services or any other services to Council in future.
- 5.4 Without affecting the application of any other provision of the Agreement, the Supplier must:
- (a) pay all costs and expenses incurred in relation to the employment or engagement of the Supplier personnel (including all remuneration, insurances, taxes and superannuation); and
 - (b) comply with all laws, industrial awards and workplace agreements relating to the employment and engagement of the Supplier personnel as employees or contractors.
- 5.5 Without affecting the application of any other provision of the Agreement, and to the extent permitted by law, the Supplier, at its cost and expense and at no cost to Council:
- (a) is responsible for the compliance with all laws relating to health, safety and welfare;
 - (b) is responsible for the health, safety and welfare of the Supplier personnel accessing and using the Site or any premises of Council, and must ensure that none of the Supplier personnel is exposed to any risk to health, safety or welfare or to hazards arising from any activity, function or task whilst at the Site or on any premises of Council;
 - (c) must ensure that the Site and any premises of Council used by the Supplier in undertaking any activity, function or task is a safe working environment, that safe systems of work are used within it, that any equipment, facility, machinery, material and plant is safe, and that appropriate safety equipment is provided to and maintained for use by the Supplier personnel and that each of the Supplier personnel uses the safety equipment provided; and
 - (d) must provide information, supervision and training to ensure that each of the Supplier personnel is safe and free from any risk to health, safety or welfare whilst undertaking any activity, function or task at the Site or on any premises of Council.
- 6. PAYMENT**
- 6.1 Subject to the Supplier complying with clause 8 and subject to clauses 6.5 and 6.6, Council must pay the Purchase Price on a payment on account basis within 30 days from the end of the month in which the Supply was performed after receiving an appropriate tax invoice from the Supplier which states the corresponding Purchase Order number (**Invoice for Payment**).
- 6.2 The Purchase Price excludes Goods and Services Tax (GST), and any other duty, tax or charge that is payable in respect of the Supply.
- 6.3 If a party makes a 'taxable supply' (as that term is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as varied from time to time) under or in connection with the Agreement, the other party must pay to the supplying party at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply.
- 6.4 The Supplier is responsible for all taxes, any increase in tax, duty or charge and for any new tax, duty or charge that is imposed before the Supply is completed.
- 6.5 The Council may set off against any payment to be made by it to the Supplier under the Agreement any amount which Council may be entitled to receive or recover from the Supplier whether under the Agreement or otherwise.
- 6.6 If Council disputes the whole or part of the Invoice for Payment, Council must pay the undisputed portion.
- 6.7 The Invoice for Payment must be received by Council within 14 days of the Supply being completed.
- 6.8 If requested by Council, the Supplier must provide satisfactory evidence to Council (including swearing a Statutory Declaration) that:
- (a) the Supplier has paid every person employed or engaged in any way by the Supplier on the works where the work performed by that person has been included in any Invoice for Payment submitted by the Supplier to Council;
 - (b) the Supplier has met its obligations under any state or federal legislation governing all workers' entitlements (including but not limited to superannuation, long service leave and the *Fair Work Act 2009* (Cth));
 - (c) the Supplier has obtained a delivery slip (with Purchase Order Number and location/date of delivery) signed by Council pursuant to clause 8; and
 - (d) the Supplier has met its obligations under any applicable workplace agreement to which it is party.
- 7. SECURITY OF PAYMENT**
- 7.1 This clause 7 will apply only to the extent that the Supply is one to which the SOP Act would apply.
- 7.2 The Supplier must give Council a copy of any notice given to the Supplier, or to any party engaged in the Supply (including any supplier or secondary subcontractor) that relates to the Supply, under the relevant SOP Act on the day on which it is received by the person to whom it is addressed.
- 7.3 If Council becomes aware that any party engaged in the Supply is, or will be entitled to, suspend work forming part of the Supply under a SOP Act then Council may (in its absolute discretion and without having any obligation to do either):
- (a) pay the party giving the notice such money; or
 - (b) provide such security to the party giving the notice, as will bring to an end that party's right to suspend work under the relevant SOP Act.
- 7.4 The amount of money paid will be a debt due from the Supplier to Council.
- 7.5 The Supplier indemnifies Council against all claims and costs suffered, including any financial losses and the actual amount of legal or other consultant fees, arising out of:
- (a) any suspension by a party engaged in the Supply (other than the Supplier);
 - (b) a breach of this clause;
 - (c) receipt of any notice pursuant to this clause or the relevant SOP Act;
 - (d) any lien or charge claimed over unfixed plant or equipment forming part of the work under the Agreement under the relevant SOP Act by a subcontractor; and
 - (e) a payment withholding request being served on the 'principal' (as that term is defined in the relevant SOP Act) under the relevant SOP Act in respect of money that is or may become payable by the 'principal' to Council for work under any head works contract.
- 8. SUPPLY OF GOODS**
- 8.1 All goods delivered as part of the Supply must be accompanied by a delivery slip and Council shall incur no liability to pay for the goods unless a delivery slip is signed for by Council.
- 8.2 The Council will not be deemed to have accepted any goods delivered as part of the Supply until:
- (a) the goods have passed any and all acceptance testing that applies to the goods; or
 - (b) Council is satisfied, in its absolute discretion, that the goods are in full working order.
- 8.3 Delivery of goods by the Supplier and receipt by Council shall not constitute acceptance of those goods by Council.

- 8.4 The Council shall not be obliged to notify the Supplier of the undertaking of any tests under clause 8.2(a), and shall not be deemed to have waived the right to test or reject the goods by reason of any non-notification.
- 8.5 The Council may inspect the goods and reject any goods which it considers to have any defect. The provisions of clause 14 shall then apply.
- 8.6 Any goods delivered must be accompanied by any necessary instructions and technical documentation, including operating and service manuals.
- 8.7 If any Supply, or any goods or items incorporated in or supplied with the Supply, benefit from any guarantee or warranty, the Supplier must ensure that Council receives the full benefit of that guarantee or warranty. If the benefit of any warranty cannot be assigned or transferred successfully to Council, then the Supplier will hold the benefit of the warranty as trustee for and on behalf of Council.
- 9. DIRECTIONS**
- The Supplier must comply with the written directions of Council's representative as to the standard of the Supply, the hours of work and any other matter or thing relating to the delivery of the Supply.
- 10. INTELLECTUAL PROPERTY**
- 10.1 The Supplier warrants that the Supply will not infringe any Intellectual Property of third parties and the Supplier indemnifies Council against any claims against, or costs, losses or damages suffered or incurred by Council, arising out of, or in any way in connection with, any actual or alleged infringement of any third party Intellectual Property.
- 10.2 Any Intellectual Property developed by the Supplier in connection with the Supply shall vest solely in Council.
- 10.3 The Council grants the Supplier a non-exclusive, non-transferable, royalty free licence to use Council's Intellectual Property for the sole purpose of completing the Supply.
- 10.4 The Supplier grants, or must procure the grant of, an unconditional and irrevocable non-exclusive, transferable, royalty-free licence to Council to ensure that Council and any third party to which Council may on-sell the Supply is able to enjoy fully the benefit of the Supply.
- 10.5 The Supplier consents and waives (and will ensure that any other person consents and waives) any act or omission that would otherwise infringe any third party right, including any moral right.
- 11. TITLE AND RISK**
- 11.1 It is a condition that all legal title and the entire beneficial interest in any goods that form part of the Supply passes to Council unencumbered on payment of the Purchase Price.
- 11.2 All goods supplied as part of the Supply shall remain at the risk of the Supplier until signed for, inspected and accepted by Council.
- 11.3 If a security interest (as defined in the PPSA) arises in the Supply, the Supplier may register that security interest at its cost and must deregister it immediately on the circumstances giving rise to the security interest ceasing to apply.
- 12. INDEMNITY**
- 12.1 The Supplier indemnifies Council (both as principal and as agent for each of Council's personnel) and must keep Council indemnified against any claims, costs, losses, expenses, liabilities or damages (whether direct or indirect) (Loss) suffered or incurred in relation to any breach of the Agreement, any negligent act or omission of the Supplier, its employees or agents, any death or injury of any person, any loss or damage to property, any liability to any third parties, and any infringement of any third party right arising in connection with the Agreement.
- 12.2 The quantum of the indemnity in clause 12.1 shall be reduced proportionately to the extent that any Loss results from any negligent act or omission of Council.
- 13. INSURANCE**
- 13.1 Unless Council expressly agrees otherwise, the Supplier must effect and maintain, at its own cost and expense, the following insurances with a reputable insurer (in the opinion of Council) prior to commencing the Supply:
- workers compensation or employers' liability insurance, covering all claims and losses for death or bodily injury to any person employed or engaged by the Supplier or any contractor of the Supplier;
 - motor vehicle and third party liability insurance required by law in relation to any vehicles used in the transportation or delivery of any goods, or the provision of any works that form part of the Supply;
 - product liability and public liability insurance in relation to legal liability for physical loss of, loss of use of, damage to or destruction of real or personal property, death or bodily injury with a policy coverage of the amount stated in the Request for Quotation (or if none stated, \$5,000,000) per occurrence;
 - if the Supply involves carriage of any goods or equipment, transit risk insurance covering all loss or damage to such goods or equipment arising from any insurable cause while in transit;
 - if required in the Request for Quotation, professional indemnity insurance with a policy coverage of the amount stated in the Request for Quotation; and
 - any other insurances that are reasonably required by Council.
- 13.2 The insurances obtained under clause 13 must contain a waiver of subrogation clause whereby the insurer waives any right to claim against Council notwithstanding any contribution by Council to the incident the subject of a claim.
- 14. DEFECTS RECTIFICATION**
- 14.1 Upon request by Council, the Supplier must correct any defect, shrinkage, fault or omission in the Supply including any aspect of the works which is not in accordance with the Agreement (Defect) at no cost to Council.
- 14.2 If the Supplier fails to correct the Defect then Council may at its sole and absolute discretion:
- correct the Defect and the Supplier will be liable to Council for the cost of correcting the Defect;
 - withhold any payment that may be or becomes due to the Supplier until the Supplier corrects the Defect; or
 - issue a written notice that Council is accepting or rejecting the portion of the Supply containing the Defect which has not been corrected. If Council issues a notice pursuant to this clause, the Purchase Price will be reduced by an amount determined by Council taking into account:
 - losses suffered by Council as a result of the Defect; and
 - the saving in cost to the Supplier in not correcting the Defect.
- 14.3 If the Supplier fails to deliver the Supply on time, the Supplier must pay Council liquidated damages at the rate stated in the Request for Quotation (if any) for every day which the Supply is late.
- 14.4 No inspection, testing or acceptance of or payment for some or all of the Supply affects in any way:
- any liability or obligation of the Supplier; or
 - any remedy or right in respect of any cost, expense, damage, liability or loss, including the right to reject any Supply.
- 15. TERMINATION**
- 15.1 The Council may terminate the Agreement at any time by giving notice in any way and in any form to the Supplier.
- 15.2 The Council may terminate the Agreement by giving written notice to the Supplier, if the Supplier becomes insolvent or materially breaches the Agreement and does not remedy that breach within 10 days after receiving written notice requiring it to remedy that breach.
- 15.3 The Council reserves the right to direct the Supplier to suspend the carrying out of the whole or part of the Agreement for such time as Council thinks fit. The Supplier shall immediately comply and shall bear its own costs of suspension.
- 15.4 The Council may direct the Agreement to re-commence at any time after any suspension and the Supplier must immediately comply with such direction.

- 15.5 Termination of the Agreement will not affect any right, power, remedy, obligation, duty or liability of any party under the Agreement which has accrued to the date of termination, which right, power, remedy, obligation, duty and liability will continue to be enforceable.
- 15.6 Other than as expressly provided for in this clause 15, Council will not be liable to the Supplier or to any other person as a consequence of termination of the Agreement.
- 15.7 On termination, the Supplier must immediately remove from the Site all of the Supplier's workers, tools, temporary buildings, materials and rubbish as directed by Council.
- 15.8 In case of termination under clause 15.1:
- (a) Council will pay for any unpaid Supply properly completed under the Agreement prior to termination and the reasonable costs of removal from Site of the Supplier's workers, tools, temporary buildings, materials and rubbish; and
 - (b) the Supplier will repay to Council any amount paid in advance for any Supply not completed or any Supply made but which does not comply with the Agreement.

The amount under this clause is the full compensation for termination under clause 15 and the Supplier acknowledges that there is no other entitlement to any further claim, counterclaim, proceedings, compensation, relief or remedy whatsoever from or in connection with the Agreement or the termination of the Agreement.

- 15.9 To the extent permitted by law, other than as provided in the Agreement, neither party has any right to terminate the Agreement.

16. DISPUTES

- 16.1 If a dispute arises in relation to the Agreement (other than in respect of Council terminating the Agreement), either party must give the other party a notice setting out the details of the dispute and the remedy that the party requires (**Notice of Dispute**).
- 16.2 Notwithstanding the existence of a dispute, the parties shall continue to perform their obligations pursuant to the Agreement.
- 16.3 Within 14 days of service of a Notice of Dispute, the parties must meet to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means.
- 16.4 If the dispute has not been resolved within 28 days of the date of service of the Notice of Dispute and the parties have not agreed on a process for the resolution of the dispute, either party may commence legal proceedings in respect of the dispute.

17. LIMITATION OF LIABILITY

- 17.1 The Council will not be liable for loss of profit, business or revenue or indirect or consequential loss.

18. CONFIDENTIALITY AND ADVERTISING

- 18.1 To the extent that clause 18.2 does not apply, the Supplier must keep information relating to the Agreement, including any details contained in the Agreement, confidential unless it receives the prior written consent of Council.
- 18.2 Information relating to the Agreement, including any details contained in the Agreement, will not be required to be kept confidential by the Supplier if it is:
- (a) publicly known;
 - (b) acquired from a source that is not forbidden or in any other way disallowed (including under any law of the jurisdiction in which the Supply is to be provided or any other contractual obligation) to disclose that information;
 - (c) required to be disclosed by law, or an order of a court or any government or regulatory authority, in the jurisdiction in which the Supply is to be provided; or
 - (d) developed in an independent manner in accordance with the law of the jurisdiction in which the Supply is to be provided.
- 18.3 The Supplier must not disclose or advertise that it is a supplier to Council without Council's prior consent.

19. DATA PROTECTION AND PRIVACY

The Supplier must comply with all personal data protection and privacy laws applicable to the data owned by each party and/or to third parties. For such purposes, the Supplier shall be bound by the governing law of

the Agreement. The Supplier must not allow personal data to be transferred outside Australia.

20. GENERAL

- 20.1 The Agreement is strictly confidential and its contents and existence may not be disclosed by either party to any other person without the other party's prior written consent.
- 20.2 The Agreement is contractual only and does not create a relationship of employment, agency, partnership or joint venture between the parties.
- 20.3 All obligations to indemnify and clauses 6.5, 16, 17, 18 and this clause 20 survive termination of the Agreement.
- 20.4 The documents comprising the Agreement are not to be construed against a party merely because that party was responsible for preparing the document.
- 20.5 This Agreement constitutes the entire agreement between Council and the Supplier in relation to the Supply.
- 20.6 Council may, but the Supplier must not (without Council's prior written consent), assign, novate or otherwise transfer any of its rights and obligations under the Agreement.
- 20.7 Any subcontracting by the Supplier will not relieve the Supplier from any liability or obligation under the Agreement and the Supplier shall remain liable to Council for the acts and omissions of subcontractors and employees and agents of subcontractors as if they were acts or omissions of the Supplier.
- 20.8 The Agreement may not be amended, supplemented or varied other than in writing signed by each party.
- 20.9 A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver from any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.
- 20.10 If any provision of the Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted or severed.
- 20.11 These terms and conditions and any contract to which they apply shall be governed by the laws of the State of Victoria and the parties submit to the jurisdiction of the courts of that State or Territory and the Commonwealth of Australia.
- 20.12 The Supplier warrants that the person signing the Request for Quotation for or on behalf of the Supplier has the authority to do so and that any of the Supplier's personnel that deal with Council have the authority to do so.
- 20.13 In these standard conditions, 'provided' also means 'delivered'.