

## **1. Definitions**

The following terms will, if not inconsistent with the context, have the meanings indicated:

"**Delivery Date**" means the date set out in the Purchase Order being the final date which the goods must be supplied;

"**Council**" means Kingston City Council.

"**Goods**" means the goods and/or services described in the Purchase Order.

"**Purchase Order**" means the Purchase Order placed by Council including these Terms.

"**Purchase Price**" means the total amount shown on the Purchase Order.

"**Supplier**" means the party described as such in the Purchase Order.

## **2. Completion**

The Supplier must supply the Goods on or before the Delivery Date in accordance with the Purchase Order.

## **3. Warranties**

In addition to other warranties in the Purchase Order and implied by law, it is a condition of the Council's purchase of the Goods that:

3.1 the Goods will be new, unless agreed otherwise;

3.2 the Goods will be fit for the purpose for which items of the same kind are commonly supplied and consistent with any description and details set out in the Purchase Order;

3.3 the Goods are merchantable quality and free from defects;

3.4 the Goods will be supplied with due skill, diligence and care;

3.5 the Goods will be compliant with all recognised standards and laws applicable in the jurisdiction where the Goods are supplied; and

3.6 the Supplier is capable of passing title in the Goods free of encumbrances and all other adverse interests at the time they are supplied to the Council.

## **4. Variation or Termination**

4.1 The Council may, at any time, by giving written notice to the Supplier, terminate the Purchase Order and the Supplier must on receipt of such notice immediately cease all work in connection with the supply of the Goods and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event the Council will pay the reasonable fees and expenses of the Supplier in accordance with the Purchase Order but not any loss of prospective profits. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had the Purchase Order been completed.

4.2 The Council may at any time give written notice to the Supplier proposing a variation to the quantity of the Goods. 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 for the provision of the varied Goods. The Council may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance the Purchase Order will continue as if no proposal under this sub-clause had been made.

## **5. Confidentiality**

The Supplier will not disclose, and will ensure that its employees, agents and contractors do not disclose, any confidential information relating to the Council or its affairs which may come to its or their knowledge during the term of the Purchase Order without the prior written consent of the Council.

## **6. Acceptance and Rejection of Goods**

All risk in the Goods remains with the Supplier are fully delivered to the delivery location and the Goods are accepted by the Council. The Council may reject any of the Goods which do not comply in all respects with the Purchase Order. The Council is not required to make payment for any rejected Goods.

## **7. Payment**

If the Supplier complies with its obligations under the Purchase Order, the Council must pay the Purchase Price to the Supplier by the method agreed with the Supplier. Payment shall be made within 30 days after delivery of the Goods and receipt of a correctly rendered invoice.

## **8. Goods and Services Tax ("GST")**

The Purchase Price is inclusive of GST. Where the Council is required to pay the Supplier any amount under the Purchase Order on account of GST, the amount representing GST will only be payable by the Council to the Supplier where the Supplier supplies to the Council a tax invoice for GST purposes, in a form approved by the Council.

## **9. Default by Supplier**

9.1 If the Supplier defaults in the performance or observance of any obligation it has under the Purchase Order, the Council may give notice to the Supplier specifying the default and requiring that such default be remedied within 14 days.

9.2 If, within 14 days after receipt of the notice, the Supplier fails to remedy the default, to the satisfaction of the Council, the Council (without prejudice to any other rights that it may have under the Purchase Order or at common law against the Supplier) may:

9.2.1 suspend payment under the Purchase Order; or

9.2.2 terminate the Purchase Order and any other purchase order between the parties.

## **10. Insolvency of Supplier**

If the Supplier -

10.1 being a person, commits any act of bankruptcy; or

10.2 being a company, commits any act of insolvency -

the Council may terminate the Purchase Order immediately.

## **11. Sub-Contracting and Assignment**

The Supplier must not, except with the written consent of the Council, sub-contract or assign the whole or any portion of its rights and obligations under the Purchase Order, and no sub-contractors or assignees will have any rights under the Purchase Order against the Council or be entitled to receive any payments under the Purchase Order from the Council. Where the Council gives its consent to the Supplier in accordance with this sub-clause, the Supplier remains fully responsible for performance under the Purchase Order.

## **12. Statutory Requirements**

The Supplier must obey and must ensure that its employees, subcontractors and agents obey any Acts, regulations and local laws in any way applicable to the performance of the Purchase Order, including, without limitation, any occupational health and safety legislation. The Supplier must maintain all insurances required by law.

## **13. Indemnity and Advance Release**

The Supplier indemnifies and holds harmless the Council, its Councillors and staff from and against all actions, claims, losses, damages, penalties or demands consequent upon, occasioned by or arising from its performance or purported performance of its obligations under the Purchase Order, including, without limitation, any acts or omissions of the Supplier's agents and employees.

## **14. Amendment**

This Purchase Order may only be varied or replaced by a document duly executed by the parties.

## **15. Further Assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by the Purchase Order.

## **16. Time of the Essence**

Time is of the essence as regards all dates, periods of time and times specified in the Purchase Order.

## **17. No Relationship**

Nothing in the Purchase Order will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in the Purchase Order will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

## **18. Number and Gender**

In the Purchase Order, a reference to:

18.1 the singular includes the plural and vice versa; and

18.2 a gender includes the other genders.

## **19. Whole Understanding**

The Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Goods are to be supplied by the Supplier. If the Supplier's acceptance or supply of the Purchase Order contains any terms in conflict with the Purchase Order, the Purchase Order will have precedence unless otherwise agreed by the Council in writing.

## **20. Governing Law**

The law of the State of Victoria governs the Purchase Order and any legal proceedings under the Purchase Order.

## **21. Joint and Several Obligations**

If the Supplier consists of two or more parties, the Purchase Order binds each of them severally and jointly.

## **22. Method of Giving Notices**

A notice required or permitted to be given by one party to another under the Purchase Order must be in writing, addressed to the other party and:

22.1 delivered to that party's address; or

22.2 transmitted by email to that party's email number.

## **23. Receipt of Notices**

A notice given to a party in accordance with Term 22 must be treated as having been duly given and received:

23.1 if delivered to a party's address, on the day of delivery; or

23.2 if transmitted by email to a party's email address, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered.

## **24. Occupational Health and Safety**

For the avoidance of doubt the Supplier must comply with all occupational health and safety legislation. The supplier must provide a current safe work method statement or equivalent to Council prior to the commencement of work to the satisfaction of Council.

## **25. Intellectual Property**

25.1 The Supplier warrants that it owns or is licensed to use all intellectual property required to be used for or associated with the manufacture and supply of the Goods. The Supplier also warrants that where any such intellectual property is owned by third parties, it has the requisite permission and authority from such third parties to grant to the Council the licenses.

25.2 The Supplier agrees to assign exclusively to the Council the copyright and ownership for all artwork, drawings, documents, images, photographs, blueprints, maps, character, calculation, information instructions and other such documents that are prepared or provided in associating with the Goods detailed in the Purchase Order.