

### **1. General**

- (a) These terms and conditions apply to any Purchase Order for goods ("Goods") and/or services ("Services") placed by Port Macquarie-Hastings Council ("Council").
- (b) These terms and conditions must be read in conjunction with any contract specified in a Purchase Order. In the event of inconsistency, the contract terms and conditions prevail.
- (c) Where no contract is specified in a Purchase Order, these terms and conditions constitute the entire agreement between the parties and anything said between the parties prior to this Purchase Order is of no effect.

### **2. Quality and Delivery**

The Supplier must deliver or provide:

- (a) the Goods safely and in such a manner as to protect them from damage; and
  - (b) the Goods or Services by the date, to the place, in the quantity and for the price,
- as specified in the Purchase Order.

### **3. Ownership and Risk**

- (a) Title in the Goods will pass to Council on acceptance in accordance with clause 5.
- (b) The Supplier assumes all risk in the Goods until it is accepted by Council.

### **4. Warranties**

- (a) In addition to any warranties implied by law, the Supplier warrants that:
  - (i) the Goods are new and unused, free from defects in material and workmanship, of merchantable quality and fit for purpose;
  - (ii) the Goods are of the description and quality specified in the Purchase Order;
  - (iii) the Services are performed to a high standard of professional care and skill by appropriately trained and qualified personnel;
  - (iv) it holds all licences to supply the Goods or Services;
  - (v) it has a right to provide the Goods or Services, and transfer unencumbered title in the Goods to Council;
  - (vi) the Goods or Services comply with all applicable Australian standards and legislation, and the Supplier complies with all applicable legislation in providing the Goods or Services;
  - (vii) the Goods or Services do not infringe any patent, registered design, trademark or name, copyright or any other protected right ("Intellectual Property").
- (b) The Supplier will ensure that any warranty offered by a manufacturer of the Goods or Services is enforceable by Council.
- (c) Council may treat any breach of the warranties in this clause 4 by the Supplier as a repudiation of the Purchase Order giving rise to the remedies specified in clause 5.

### **5. Acceptance and Rejection**

- (a) Without limiting clause 4(c), Council may reject, within 14 days, the Goods or Services if Council believes the Goods or Services are defective, do not comply with the warranties specified in clause 4 above or do not meet the requirements of the Purchase Order.
- (b) If Council rejects the Goods or Services (in whole or part) the Supplier must comply with a reasonable requirement of Council to:
  - (i) collect the defective Goods and replace them at the Supplier's expense or make good any defective services; or
  - (ii) refund Council any amount paid for the defective Goods or Services.
- (c) If Council does not notify the Supplier of rejection within the 14 day period, Council will be taken to have accepted the Goods or Services, though Council may by notice in writing accept the Goods or Services sooner.

### **6. Cancellation**

Council may (at any time before delivery), cancel or change the Purchase Order. If this occurs, and:

- (a) the change causes an increase or decrease in the cost of the Goods or Services, or time required to deliver the Goods or Services, the cost payable or time for performance will be amended to reflect the change; or
- (b) the Supplier has already incurred any reasonable expense in satisfying the Purchase Order, Council will pay those expenses.

### **7. Price, Payment Terms, GST**

- (a) The Supplier must have an Australian Business Number ("ABN").
- (b) Payment will only be made on submission of a valid tax invoice quoting the Supplier's business name, ABN, Purchase Order number and GST component (if any).
- (c) The Supplier must issue a valid tax invoice for the Goods or Services within 28 days from the date of the Purchase Order.
- (d) Payment will be by Electronic Funds Transfer to the Supplier's nominated bank account within 30 days from receipt of a valid tax invoice.

### **8. Intellectual Property**

- (a) The Supplier grants to Council a non-exclusive licence to use the Supplier's Intellectual Property rights in relation to the Goods or Services.
- (b) The Supplier warrants that it owns all necessary Intellectual Property in all information created pursuant to the Purchase Order to grant the licence in clause 4(a).

### **9. Indemnity**

The Supplier indemnifies Council against any and all claims by a third party and any loss, personal injury, death, damage or expense arising out of or in connection with an act or omission of the Supplier in supplying the Goods or Services or any and all obligations or warranties under these terms and conditions.

### **10. Insurance**

- (a) The Supplier will effect and maintain appropriate insurance policies for the Goods or Services provided, and note Council as an interested person where applicable.
- (b) On request, the Supplier will provide Council with proof of insurance acceptable to Council.

### **11. WH&S and Work Cover regulations**

All Suppliers and contractors must comply with current WHS legislation.

### **12. Statement of Business Ethics**

All Suppliers and contractors agree that they have read and understood Council's Statement of Business Ethics ("Business Ethics Statement") available at [www.pmhc.nsw.gov.au](http://www.pmhc.nsw.gov.au) and will comply with its requirements.

### **13. Termination**

Without prejudice to any other rights, Council may terminate this agreement if the Supplier:

- (a) fails to deliver the Goods or Services in accordance with the Purchase Order;
- (b) notifies Council that it cannot deliver or provide the Goods or Services;
- (c) breaches a requirement under the Statement of Business Ethics;
- (d) excluding a breach under clause 13(c), has not remedied a breach within 5 days of receiving written notice of that breach from Council; or
- (e) becomes or threatens to become insolvent or bankrupt or enters into a compromise or arrangement with creditors or any form of external administration.

### **14. Disputes**

In the event of any dispute arising between Council and the Supplier that cannot be resolved by negotiations in good faith, Council may nominate a formal dispute resolution process to be followed by the parties. The Supplier must continue to perform obligations notwithstanding the existence of the dispute.

### **15. Other**

- (a) The Supplier must not assign the benefit of the Purchase Order without Council's prior written approval.
- (b) No variation of the Purchase Order will be binding on Council unless it is in writing and signed by a duly authorised representative of Council.
- (c) Council's failure or delay to enforce a condition, or to exercise a right or remedy for breach, is not a waiver of any other breach.
- (d) These conditions will be governed by the law of New South Wales and the parties submit to the jurisdiction in that State.
- (e) The Supplier will comply with all reasonable directions given by Council when accessing Council premises.