

KEMPSEY SHIRE COUNCIL PURCHASE ORDER - STANDARD TERMS AND CONDITIONS

1. General

- a. These terms and conditions apply to any Purchase Order for goods ("Goods") and/or services ("Services") placed by Kempsey Shire Council ("Council").
- b. A contract is formed between Council and the provider of Goods and/or Services ("Supplier") on the earlier of:
 - i. the date the Supplier accepts the Purchase Order; or
 - ii. the date the Supplier commences to supply the Goods and/or Services.
- c. These terms and conditions must be read in conjunction with any contract specified in a Purchase Order. In the event of inconsistency, the terms of any such Contract prevail to the extent of that inconsistency.
- d. 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.
- e. Any terms and conditions included in any quote or correspondence provided by the Supplier:
 - i. are not legally binding;
 - ii. do not form part of these Purchase Order Terms and Conditions; and
 - iii. do not modify or alter these Purchase Order Terms and Conditions.

2. Quality and Delivery

- a. The Supplier must:
 - i. deliver or provide the Goods safely and in such a manner as to protect them from damage;
 - ii. deliver or provide the Goods or Services by the date, to the place, in the quantity and for the price, as specified in the Purchase Order;
 - iii. promptly notify Council of anything which may cause delay in the delivery or provision of the Goods or services, giving complete details of the cause and estimated delay; and
 - iv. deliver the Goods with a delivery docket which must be signed by a representative of Council.
- b. If the Supplier notifies Council of any delay in accordance with clause 2.a.iii, Council may, in its absolute discretion, extend the date of delivery by giving written notice to the Supplier.

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

Without limiting clause 4(c), Council may, at any time before acceptance or within 14 days after acceptance, reject the Goods or Services in whole or in part, 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.

- a. 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.
- b. 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.
- c. For the purposes of clause 5.a above, Council may unpack, inspect and test the Goods to ensure that the Goods conform to the standard as set out in the relevant contract. Any unpacking, inspection and testing of the Goods will not constitute acceptance of the Goods by Council.

6. Cancellation

Council may (at any time before delivery of the Goods or Services), 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 for which it cannot otherwise be compensated, Council will pay those expenses.

7. Price, Payment Terms and GST

- a. The supplier must issue a valid tax invoice providing all required information in accordance with relevant legislation for the goods and/or services provided within 28 days from the date of the Purchase Order or provision of goods. This may include (but is not limited to) the date of the invoice, the Supplier's business name, an Australian Business Number ("ABN"), Purchase Order number and GST component (if applicable). If applicable, the Supplier's tax invoice(s) are to show all the details required by GST Law.
- b. Payment will be by Electronic Funds Transfer to the Supplier's nominated bank account within 30 days from receipt of a valid tax invoice.
- c. Without limiting Council's rights under any other provision of this Purchase Order, Council may deduct from or set off against any monies which may be or thereafter become payable by Council to the Supplier:
 - i. any debt due from the Supplier to Council; and
 - ii. any claim which Council may have against the Supplier under or by virtue of any provision of this Purchase Order or otherwise at law or in equity.
- d. Payment does not constitute an acceptance by Council that the Goods and/or Services are not defective and will not in any way effect Council's rights under these terms and conditions.

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 from and against any claims, 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 the following insurance policies for the Goods or Services provided, and note Council as an interested person where applicable:
 - i. where the Contract includes the supply of Goods:
 1. product liability insurance for an amount in respect of any one claim or series of claims arising from the one original cause of not less than \$20 Million; and
 2. Transit (all risk) insurance covering transit, loading and unloading of Goods for the full replacement value of the Goods until the Goods have been accepted by Council.
 - ii. where the Contract includes the performance of Services:
 1. public liability Insurance for an amount in respect of any one claim or series of claims arising from the one original cause of not less than \$20 Million;
 2. motor vehicle insurance for any vehicles used to provide the Goods/Services; and
 3. workers compensation insurance for the maximum amount permitted by law, covering the Supplier's liability under common law and statute for death or injury to any person employed by the Supplier.
 - iii. where the Contract includes for professional services to be performed, professional indemnity insurance for at least \$1 Million for any one occurrence, maintained for not less than six years after the duration of the Contract, unless specifically excluded elsewhere in the Contract.
- b. On request, the Supplier will provide Council with proof of insurance acceptable to Council.

11. Risk Management, WHS and Work Cover regulations

- a. A Supplier must comply, and ensure that its workers and agents comply with current WHS legislation and all relevant Australian Standards and codes.
- b. The Supplier must comply with all local environmental controls to protect the built and natural environment, including compliance with the *Protection of the Environment Operations Act 1997* (NSW) applicable to the Goods and/or Services.

12. Chain of Responsibility (CoR)

To conduct business with Council, our partners in the heavy vehicle transport industry (vehicles over 4.5 ton) will need to comply with the NHVR CoR transport safety rules and regulations, as well as Heavy Vehicle Legislation. These include; speed, fatigue, mass, dimension, loading, vehicle standards and regular reporting systems.

13. Statement of Business Ethics

All Suppliers and contractors agree that they have read and understood Council's Statement of Business Ethics available at www.kempsey.nsw.gov.au and will comply with its requirements.

14. 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; excluding a breach under cl 13(c), has not remedied a breach within 5 days of receiving written notice of that breach from Council.; or
- d. becomes or threatens to become insolvent or bankrupt or enters into a compromise or arrangement with creditors or any form of external administration.

15. 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.

16. Notices

- a. Any notice, consent or other communication under the Contract will be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - i. delivered to that person's address;
 - ii. sent by pre-paid mail to that person's address; or
 - iii. transmitted by facsimile to that person's address.
- b. A notice given to a person in accordance with this clause is treated as having been given and received:
 - i. if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - ii. if sent by pre-paid mail, on the third Business Day after posting; and
 - iii. if transmitted by facsimile or email to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- c. For the purpose of this clause the address of a person is the address set out in this Contract or another address of which that person may from time to time give notice to each other person.

17. 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.

18. Interpretation

In these Purchase Order Terms and Conditions:

- a. **Business Day** means any day other than a Saturday, Sunday or public holiday in Sydney.
- b. **Contract** means the contract comprising the Purchase Order, these Purchase Order Terms and Conditions and any other document referred to in, or attached to, the Purchase Order.
- c. **Council** means Kempsey Shire Council (ABN 70 705 618 663).
- d. **GST** means the tax payable on Taxable Supplies within the meaning of the GST Law.
- e. **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related legislation that is enacted to validate, recapture or recoup tax.
- f. **Heavy Vehicle Legislation** means:
 - i. *Heavy Vehicle National Law* (NSW);
 - ii. *Heavy Vehicle (Fatigue Management) National Regulation* (NSW);
 - iii. *Heavy Vehicle (General) National Regulation* (NSW);
 - iv. *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* (NSW); and
 - v. *Heavy Vehicle (Vehicle Standards) National Regulation* (NSW).
- g. **Purchase Order** means the document headed as such and describing the Goods and/or Services to be supplied which may be attached to the Purchase Order Terms and Conditions.
- h. **WHS Legislation** means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).