

## 1. DEFINITIONS

1.1. The following capitalised terms used in this Agreement bear the following meanings:

**Agreement** means these terms and conditions which apply to each Purchase Order.

**Council** means Napier City Council.

**Delivery** for Goods, is the delivery of the Goods in good order and condition to Council's premises or the location specified in the Purchase Order, for Services, it is the provision of the Services to Council's satisfaction at Council's premises or the location specified in the Purchase Order.

**Goods** means all goods identified in the Purchase Order and all component parts of those goods to be provided by the Supplier to Council.

**GST** means the goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing at the time of supply.

**Purchase Order** means the Purchase Order submitted by Council to the Supplier to deliver Goods and/or Services.

**Purchase Order Number** means the number set out in the top right hand corner of the relevant Purchase Order.

**Services** means all the services provided by the Supplier to Council identified in the Purchase Order.

**Supplier** means the person supplying the Goods or performing the Services as identified in the Purchase Order.

**Working Days** means any day other than a Saturday, Sunday or a Public Holiday (as that term is defined in the Holiday Act 2003) in Hawke's Bay.

## 2. AGREEMENT

2.1. All Purchase Orders placed by Council are subject to the following terms and conditions. Where Council and Supplier have signed a written contract, the terms and conditions of that contract take precedence.

2.2. The terms and conditions of this Agreement prevail over the terms contained in the Supplier's standard conditions of sale, invoices, packing slips, delivery dockets or any other communication.

## 3. PURCHASE ORDER

3.1. Council will confirm all orders for Good(s) or Services by issuing Purchase Orders. Council will not be liable for any Goods or Services supplied unless ordered on Council's Purchase Order.

## 4. ACCEPTING AN ORDER

4.1. By accepting a Purchase Order from Council, the Supplier agrees that the Goods or Services will be provided under the terms of this Agreement.

4.2. If a Supplier wants to negotiate different terms, it must do so before the Goods or Services are provided. Other terms will not apply unless expressly agreed by Council in writing.

4.3. A notification to the Council that a Supplier accepts a Purchase Order subject to additional or amended terms is not a valid unless agreed by Council in writing.

4.4. The Council will not be bound by additional or amended terms unless it has agreed to them in writing, and may accept a supply of Goods or Services without being bound by any additional or amended terms it has been notified of but not agreed to in writing.

## 5. DELIVERY OF GOODS

5.1. In relation to the Delivery of Goods, the Supplier must (at its cost):

- adequately pack and protect the Goods against damage and deterioration during Delivery;
- deliver the Goods to the delivery address provided by Council;
- provide detailed advice notes and packing slips with the Goods;
- provide applicable documentation such as datasheets or certificate of conformance/analysis
- otherwise satisfy Council's delivery requirements as set out in the Purchase Order or otherwise advised by Council.

5.2. A delivery note must accompany all deliveries, and must include:

- Council's Purchase Order number
- Supplier's legal name and contact details
- Full description of Goods/Services and quantity delivered

5.3. Quantities delivered must conform to the quantities ordered by Council. Council will only accept part deliveries and interim invoices if agreed in writing by Council prior to delivery.

The signing of any delivery receipt or similar document by a Council representative does not indicate Council's acceptance of the Goods.

5.5. If, following inspection of any delivered Good, Council considers that that Good, or the Delivery of that Good, breaches this Agreement, then Council may (without limiting any other right or remedy):

- require that the Supplier repair or replace the Good, in which case the Supplier must immediately do so, at its cost; or
- reject the Good, in which case clause 5.7 will apply.

5.6. If Council is not satisfied with the Supplier's progress within a reasonable time in repairing or replacing any Good Council may:

- reject that Good, in which case clause 5.7 will apply; or
- arrange for the Good to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by Council in doing so.

5.7. If Council rejects any Good in accordance with this Agreement the Supplier must:

- remove the rejected Good from Council's premises at its own risk and expense. If the Supplier does not remove the rejected Goods within 15 Business Days, Council may return the Good and recover from the Supplier any cost and expense incurred; and
- provide a full refund of any amount paid (or credit for any amount payable) for the rejected Good.

5.8. If the Council wishes to test or inspect any Goods before accepting delivery, the Supplier will provide any assistance with that testing or inspection which is reasonably requested by the Council. Goods will be subject to subsequently inspection and use of the Goods. Acceptance testing does not negate Council's rights to recover from the Supplier or reject the Goods for any inadequacy in the Goods supplied.

## 6. TITLE AND RISK

6.1. Unencumbered title in Goods will pass to Council upon delivery of the Goods to Council.

6.2. Risk and ownership in Goods will pass to Council upon delivery, this does not prejudice Council's rights of redress at law if the Goods are damaged, inadequate or do not match the quantity and/or quality set out in the Purchase Order.

## 7. DELIVERY OF SERVICES

7.1. The Supplier must ensure all Services performed by the Supplier:

- will be carried out with all reasonable care, skill and diligence;
- will be carried out at the time specified in the relevant Purchase Order, or if no time is specified, will be carried out promptly;
- will be carried out by an appropriate number of people with an appropriate level of experience, qualification and supervision;
- will be carried out in accordance with all applicable legislative and regulatory requirements, and all applicable industry codes of conduct.

7.2. If the Supplier breaches this Agreement in relation to the Delivery of any Service then Council may (without limiting any other right or remedy):

- require the Supplier to perform the Services again to the required standard at the Supplier's expense; or
- have the Services re-supplied by another person and recover the cost of doing so from the Supplier.

## 8. PRICE

8.1. The prices stated on the Council's Purchase Order are fixed, unless there is prior written approval from both parties.

8.2. The price includes the Goods and/or Services, freight, insurance, packaging, crating, local cartage, customs duty and/or any other cost involved in the delivery of the Goods and/or Services.

8.3. The Supplier is not entitled to claim expenses, surcharges, margins or disbursements except if otherwise agreed in advance and in writing by the Council.

8.4. The price is exclusive of GST.

## 9. PAYMENT

9.1. Council will pay for the Goods/Services in NZ dollars on the 20th of the month following the month of receipt of invoice, or as specified on the header page of this Purchase Order.

9.2. All payments are subject to Council receiving a GST tax invoice complying with clause 10.1 of this contract.

- 9.3. Failure by the Council to dispute any invoice prior to payment will not prejudice Council's rights to subsequently dispute the correctness of that invoice.
- 9.4. Council may withhold, deduct, or set off the amount of any overpayment or any amount recoverable by Council from the Supplier under this contract from any future payment.

## 10. **INVOICES**

- 10.1. Each GST tax invoice must meet all legal requirements and must state the following information:
- Name and address of recipient (Napier City Council)
  - The words 'Tax Invoice' in a prominent place
  - Council contact (issuer of Purchase Order)
  - Council Purchase Order/ Contract number
  - Supplier's legal name and address
  - Supplier's GST number
  - Supplier's invoice number
  - Description of goods or services including quantity delivered
  - Date of delivery
  - The total amount payable \$NZ
  - A statement that GST (if any) is included.
- 10.2. Additionally we require your invoice to:
- An electronic pdf document (not scanned)
  - Include the bank account number
- 10.3. Invoices must be submitted to Council within ten (10) days of delivery and sent to:

**creditors@napier.govt.nz**

Or

**Napier City Council (Accounts Payable), Private Bag 6010,  
Napier 4142.**

## 11. **ACCESS TO COUNCIL SITES**

- 11.1. If access to any Council site is necessary for the supply of Goods/Services, Council will allow the Supplier access at reasonable times, as necessary.
- 11.2. The Supplier will comply with Council's security, operational and site requirements where the Supplier has access to any Council Site.
- 11.3. When required by Council, the Supplier must complete a Council Site specific induction programme before delivering the Goods/Services to Council in accordance with this Agreement.

## 12. **REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

- 12.1. The Supplier represents and warrants that all Goods supplied by the Supplier:
- are new and unused (unless otherwise agreed by the Council);
  - are of merchantable quality, and free of any defects in materials and workmanship;
  - are fit for any purpose which they could reasonably be expected to be used for, including any purpose which the Council told the Supplier it intended to use them for at or prior to the time it delivered the Purchase Order;
  - comply with any requirements and specifications supplied by Council or agreed between Council and the Supplier
  - comply with all applicable legislation, regulation and industry codes of practice;
  - match any descriptions of them published by or on behalf of the manufacturer or the Supplier;
  - are able to be lawfully sold by the Supplier to the Council and that the Council will, on delivery, receive good title to them, free from any security interest, lien or other encumbrance.
- 12.2. The Supplier will pass on to the Council the benefit of any warranty or guarantee received in respect of Goods supplied and will provide reasonable assistance to the Council to enforce such warranty or guarantee.

## 13. **INDEMNITY**

- 13.1. The Supplier must indemnify the Council in respect of any loss, damage or expense suffered or incurred by the Council (including legal fees on a solicitor and own client basis) as a direct or indirect consequence of:
- any act, error or omission by the Supplier and for which the Supplier is legally liable; or
  - any breach by the Supplier of any warranty or other obligation in this Agreement.
- 13.2. The indemnity must survive the termination of this Agreement.

## 14. **INSURANCE**

- 14.1. The Supplier must maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Supplier, including, where applicable, professional indemnity insurance and insurance against public liability and property damage.
- 14.2. The Council may, acting reasonably on request, agree in writing to the requirements of this clause 14 being modified to take account of the nature of the Supplier's engagement.

## 15. **DEFAULT**

- 15.1. Without limiting any other rights or remedies which the Council has, the Council may, by notice in writing, terminate this Agreement with immediate effect if the Supplier:
- materially breaches the terms of this Agreement and does not remedy that breach within 10 Working Days of being notified of the breach by the Council;
  - goes into liquidation, has a receiver, administrator or statutory manager appointed in respect of itself or its assets, becomes unable to pay its debts as they fall due, is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts, is removed from the New Zealand Companies Register
  - engages in any activity, conduct or otherwise that may adversely affect the reputation of the Council
- 15.2. If the Supplier breaches any term of the Agreement, the Council may withhold payment of any amounts due under this Agreement in respect of the Goods or Services until the relevant breach has been remedied. If the breach cannot be remedied, the Council may permanently withhold an amount equal to the loss which it reasonably calculates it has suffered as a result of the breach.
- 15.3. If the Council disputes any part of an invoice submitted by the Supplier, the Council will pay the undisputed amount but may withhold payment of the disputed amount without penalty until the dispute is resolved.

## 16. **ENVIRONMENTAL**

- 16.1. The Supplier will not allow any unauthorised activity, nuisance, discharge or any contaminant, or making of excessive noise at relevant properties of the Council.

## 17. **HEALTH & SAFETY**

- 17.1. The Supplier must comply with the Health and Safety at Work Act 2015 and all other regulatory provisions relating to the provision of the Goods or Services when on any Council site.

## 18. **INTELLECTUAL PROPERTY**

- 18.1. All Intellectual Property Rights owned by a party prior to, or independently of, a Purchase Order will remain owned by that party.
- 18.2. All Intellectual Property Rights created the course of supplying the Goods or Services, will be owned by the Council. The Supplier must execute all documents and take all other actions reasonably required by the Council to give effect to this clause 18.2.
- 18.3. The Supplier must ensure that the Goods or Services do not breach the intellectual property rights of any third party.

## 19. **CONFIDENTIALITY**

- 19.1. The Supplier will not use Council's name to advertise or promote itself or its business in any way without the prior written consent of the Council
- 19.2. Any information provided by Council to the Supplier which is marked as confidential, must not be disclosed to any third party by the Supplier without the prior written consent of Council or used by the Supplier other than for the purpose of satisfying the Supplier's obligations under the Purchase Order. This obligation survives termination or expiration of the Purchase Order.
- 19.3. Council is subject to the provisions of the Local Government Official Information and Meetings Act 1987 and may be required to disclose information relating to the Services including the Purchase Order and other documentation to which the Purchase Order relates.

## 20. **GENERAL**

- 20.1. Neither party will be liable to the other for any delays nor non-performance of contractual obligations under this Agreement caused by a Force Majeure, provided each party has taken reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure event. A Force Majeure event includes fire, outbreaks of war, acts of hostility and acts of God.

## Purchase Order Terms and Conditions

- 20.2. The Supplier warrants that, as at the date of the Purchase Order, it has no conflict of interest in providing the Goods and/or Services. The Supplier must immediately notify Council in writing if any conflict of interest arises in relation to the Goods or Services.
- 20.3. The Supplier must not assign or subcontract any of its rights or obligations under these terms and conditions without Council's prior written consent.
- 20.4. Nothing in these terms and conditions is to be interpreted as constituting either Council or the Supplier as agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in these terms and conditions.
- 20.5. If any provision of these terms and conditions is held invalid, unenforceable or illegal for any reason, these terms and conditions will remain otherwise in full force apart from such provisions, which will be deemed deleted.
- 20.6. The Supplier's Delivery of Goods and Services is non-exclusive and Council may appoint any other Supplier to provide goods and services identical or similar to the Goods and Services.
- 20.7. No failure or delay on the part of Council in exercising any of its rights under the Order or these terms and conditions shall be construed as constituting a waiver of any such rights.
- 20.8. This Agreement is governed by New Zealand law.