

**GUNNEDAH SHIRE COUNCIL**

## **PURCHASING TERMS AND CONDITIONS**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In these Conditions, except to the extent that the context otherwise requires:
- “Agreement” means the agreement constituted under condition 3.1
  - “Business Day” means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;
  - “Council” means Gunnedah Shire Council;
  - “Goods” mean the goods and ancillary services specified in the Purchase Order or on a schedule attached to the Purchase Order and any ancillary goods and services required in supplying the Goods;
  - “Principal Contractor” means the principal contractor of the location where the Goods or Services are to be supplied, as defined in the Occupational Health and Safety Act 2000 (NSW);
  - “Services” means the services and ancillary goods specified in the Purchase Order or in a schedule attached to the Purchase Order and ancillary services and goods required in performing the Services;
  - “Standard Contract” means a contract or agreement contained in Council’s procurement precedents, which the offer or tender by Council states will apply to the Goods or Services which are to be supplied;
  - “Supplier” means the person specified in the Purchase Order as the supplier;
  - “Terms and Conditions” means these terms and conditions, which form part of the Purchase Order.
- 1.2 Where the Supplier comprises two or more persons an agreement or obligation to be performed or observed by the Supplier binds those persons jointly and severally, and a reference to the Supplier includes a reference to any one or more of those persons.
- 1.3 A reference to the Supplier or Council includes its respective successors and permitted assigns.
- 1.4 In the interpretation of this Agreement, headings shall be disregarded.

### **2. GENERAL TERMS OF THE AGREEMENT**

- 2.1 No supplier is entitled to supply goods or services to Council without a duly authorised Purchase Order from Council.
- 2.2 The official Purchase Order number MUST be quoted on ALL delivery notes, invoices and correspondence. All invoices are to be mailed direct to Accounts Payable, Gunnedah Shire Council, PO Box 63 Gunnedah NSW 2830. If the Purchase Order number does not appear on the invoice, payment may be delayed and not processed within the normal payment terms under Clause 5.4.
- 2.3 Unless advised to the contrary in writing, it is assumed by Council that the supplier agrees to accept the price or prices and to comply with Councils Purchasing Terms and Conditions
- 2.4 Where the Purchase Order is accompanied by, or is specified as being subject to or to be read with, one of Council’s Standard Contracts, or is sent to the Supplier after the Supplier has executed or is obligated to execute a Standard Contract for the supply of the Goods or Services (whether or not the Standard Contract is included with or mentioned in the Purchase Order), the terms of the Standard Contract will form part of the Purchase Order and will prevail over these Terms and Conditions to the extent of any inconsistency.

- 2.5 Neither the Supplier nor Council shall assign or purport to assign this Agreement or any right under this Agreement without the prior written consent of the other.
- 2.6 This Agreement is in Australian currency and is governed by and is to be construed in accordance with the laws of the State of New South Wales. All disputes which may arise relating to or arising out of the Contract shall be submitted to arbitration.
- 2.7 The failure of the Supplier or Council at any time to require full or partial performance of any provision of this Agreement shall not affect in any way its full right to require that performance subsequently. The waiver by either the Supplier or Council of a breach of a provision of this Agreement shall not be deemed a waiver of all or part of that provision or of any other provision or of its right to avail itself of its rights subsequently. Any waiver of a breach of this Agreement shall be in writing signed by the party granting the waiver and shall be effective only to the extent specifically set out in the waiver.
- 2.8 This Agreement may only be altered in writing signed by both the Supplier and Council.
- 2.9 If any part of this Agreement is rendered invalid by any law or is held to be invalid or unenforceable, then that part shall be deleted but, to the extent the remainder is capable of being performed, neither the invalidity or unenforceability nor the deletion shall affect the validity or enforceability of the remaining parts of this Agreement.
- 2.10 All conflicts of interest (actual or implied) between the Supplier and Council and/or any related party relationships between employees of the supplier and Council are to be reported immediately.
- 2.11 Suppliers warrant that the subject of the Contract does not infringe any patent Trademark, copyright or Registered Design and undertake to indemnify the Council against all damages, losses or cost suffered by them in respect of any claim made under any patent, Trademark, Copyright and Registered Design. Should a Supplier receive notice of any claim that the subject of the Purchase Order infringes on any Patents, Trademarks, Copyrights and Registered Designs, then Council shall have the right to cancel the Contract.
- 2.12 Council is committed to local environmental controls and safeguards to protect the built and natural environment. The Supplier will be required to effect adequate controls in accordance with statutory requirements to ensure protection of the environment.

### **3. CONDITIONS OF FULFILMENT, SUPPLIER OBLIGATIONS AND COUNCIL EXPECTATIONS**

- 3.1 Acceptance by the Supplier of an order for the Goods or Services placed by Council on or accompanied by this Purchase Order constitutes an agreement by the Supplier to supply the Goods or Services to Council on these Terms and Conditions.
- 3.2 Where this Agreement relates to Goods, then unless otherwise agreed in writing by both the Supplier and Council, the Goods supplied must conform with all relevant Australian Standards which relate to the Goods and must correspond with either;
- (a) the sample of the Goods which have been produced to and examined by employees of Council, except to the extent that variations from the sample are expressly permitted or required by the description of the Goods set out in this Purchase Order or in a schedule attached to this Purchase Order; or
  - (b) where no sample has been so produced and examined, the description of the Goods set out in this Purchase Order or in a schedule attached to this Purchase Order or, if no such description is set out, the description of the Goods provided by the Supplier.
- 3.3 Where this Agreement relates to Services, then unless otherwise agreed in writing by both the Supplier and Council, the Services provided must, correspond with the description of the Services set out in this Purchase Order or in a schedule attached to this Purchase Order, or if no such description is set out, the description of the Services provided by the Supplier and be to any standard or level or service which may be so specified.

- 3.4 Despite any other provision of these Terms and Conditions, the Goods supplied and the Services provided must at all times be fit for the purposes for which such Goods are supplied or Services are provided.
- 3.5 If Goods are hazardous substances, relevant material safety data sheets must be supplied.
- 3.6 If Goods are for plant and equipment, hazard assessment information must be applied.
- 3.7 The Supplier must obtain the prior written approval of Council to assign or subcontract the Purchase Order and contract or any part thereof. Approval to assign or subcontract shall not relieve the contractor from any of its obligations under the Purchase Order and Contract, or impose any liability upon Council to an assignee or a subcontractor
- 3.8 The Supplier must obey and must ensure that its employees, sub-contractors and agents obey any Acts, Regulations and Local Laws in any way applicable to the performance of this Purchase Order.

#### **4. DELIVERY, INSPECTION AND REJECTION**

- 4.1 Where this Agreement relates to Goods, the Supplier shall deliver the Goods during normal business hours to the location and in accordance with the delivery timetable set out in this Purchase Order or in a schedule attached to this Purchase Order. For the delivery to be effective the supplier must obtain the signature of the Council staff member acknowledging receipt of the goods. Notwithstanding that a Council representative or agent may sign delivery documents or invoices or similar documents produced by a supplier, none of the supplier's terms and conditions will be incorporated into nor form part of the Agreement to Supply Goods or Services between the parties.
- 4.2 Where this Agreement relates to Services, the Supplier shall supply the Services to the location and in accordance with the delivery timetable set out in this Purchase Order or in a schedule attached to the Purchase Order.
- 4.3 The time for delivery of the Goods or supply of the Services is of the essence of this Agreement.
- 4.4 If Council reasonably considers that all or any of the Goods and Services are unsatisfactory because of a breach of this Purchase Order, Council may notify the Supplier in writing, within 10 Business Days of the delivery or performance of the relevant Goods or Services, setting out reasons for Council's opinion and the conditions or basis upon which Council will accept the Goods or Services, if any.
- 4.5 If Council does not notify the Supplier in accordance with clause 4.4, Council shall be deemed to have accepted that the Goods or Services comply with the terms of this Agreement. Such acceptance will not, however, constitute a waiver of any right which but for the acceptance, Council would have had arising from any defect in or want of compliance with the specifications for the Goods or Services later discovered by Council.
- 4.6 If:
  - (a) Council notifies the Supplier in accordance with clause 4.4 that the Goods or Services are unsatisfactory; or
  - (b) the Supplier has not delivered the Goods or supplied the Services to Council within the time limits prescribed in the Purchase Order, Council may do any one or more of the following:
  - (c) reject or accept all or some of the Goods or Services;
  - (d) negotiate with the Supplier the alteration of any provision of this Agreement, including without limitation the price for the Goods and Services, the timing of delivery or supply, the quantity of Goods to be delivered and the extent of the Services to be supplied;

- (e) terminate this Agreement;
  - (f) sue the Supplier for damages; or
  - (g) avail itself of any other remedy at law or in equity.
- 4.7 Termination of this Agreement under clause 4.6 relieves the Supplier of the obligation to deliver the Goods or supply the Services, but does not relieve the Supplier from the consequences of any breach by the Supplier of these Terms and Conditions which occurred before the Agreement was terminated.
- 4.8 If any of the Goods are rejected by Council under clause 4.4, the Supplier shall at its own cost within 7 days of rejection collect the rejected Goods from Council during normal business hours. The Supplier acknowledges that:
- (a) Council is not at any time the bailee of the Goods for the Supplier;
  - (b) if the rejected Goods are not collected by the Supplier within that 7 day period, Council may return them to the address of the Supplier shown in this Purchase Order; and
  - (c) any cost incurred by Council in so doing will be paid by the Supplier to Council upon demand.
- 4.9 If any of the Services are rejected by Council under clause 4.4, the Supplier shall at its cost carry out such rectifications and restorations concerning the rejected Services within such reasonable time as is specified by Council in its notice given under clause 4.4, or if not specified in that notice, at a later point in time.
- 4.10 Any items appearing on this Purchase Order that are unable to be supplied by the requested delivery date must be advised to the Purchasing Officer on the Purchase Order. Council then reserves the right to alter or cancel part or all of the order that will not be supplied by the required date.

## **5. PRICE AND PAYMENT**

- 5.1 The price for the Goods or Services shall be the price:
- (a) set out in the Purchase Order;
  - (b) which has been agreed to in writing by Council and which is set out in the offer, tender or other documentation which accompanies this Purchase Order or to which this Purchase Order relates; or
  - (c) where some of the Goods or Services have been rejected and the Supplier and Council have renegotiated the price under clause 4.6(d), that renegotiated price.
- 5.2 The price for any goods or services approved shall be as agreed in writing by the Supplier and Council on a duly authorised Council Purchase Order.
- 5.3 The Supplier must supply Council a tax invoice for such of the Goods delivered or the Services supplied and these have not been rejected under clause 4.4.
- 5.4 Council shall pay for the Goods or the Services invoiced under clause 5.3 net 30 days from the month end of the date in which the Supplier's invoice was dated or received, whichever is the later, unless settlement terms have been negotiated and are in writing from Council.
- 5.5 Property in and title to the Goods shall pass to Council when Council accepts or is deemed to have accepted the Goods, and from that date the Goods shall be at the risk of Council.

- 5.6 Where the effect of any law is that a lien over any of the Goods in favour of the Supplier is implied or given and it is not lawful to exclude the lien, then such lien shall (but only to the extent required by law) apply to this Agreement, but otherwise the right to any lien is excluded from this Agreement or waived by the Supplier.

## **6. LIABILITIES, INDEMNITIES, WARRANTIES AND TERMINATION**

- 6.1 All obligations and assurances which are or may be imposed upon a supplier of goods or services and all rights and benefits which are or may be conferred upon the recipient of goods or services by any law shall, to the extent they are not inconsistent with these conditions, apply to the Supplier and Council respectively unless (but then only to the extent specified) otherwise agreed in writing between the Supplier and Council.
- 6.2 Council may terminate this Agreement by written notice to the Supplier if:
- (a) the Supplier fails to remedy any breach of its obligations under this Agreement within 7 days after written demand for remedy has been made by Council;
  - (b) the Supplier becomes insolvent, goes into liquidation or is wound up or dissolved or a receiver, receiver and manager, official manager, trustee, provisional liquidator or similar officer is appointed over any of its assets, or the Supplier enters into a scheme of arrangement, composition or compromise with or assignment for the benefit of any of its creditors or any inspector of all or any part of its affairs is appointed or if any steps or proceedings are taken against the Supplier for any such purpose;
  - (c) the Supplier commits an act of bankruptcy, becomes bankrupt or unable to pay its debts or suspends payment of its debts within the meaning of the bankruptcy Act 1966 of the Commonwealth or enters into a personal insolvency agreement;
  - (d) the Supplier commits any criminal offence which affects or compromises its ability to satisfactorily perform its obligations under this Agreement;
  - (e) the Supplier becomes a person of unsound mind or a person whose person or estate is liable to be dealt with in any way under any law relating to mental health; or
  - (f) execution, distress or other legal process is levied against any property of the Supplier and such process is not satisfied within 30 days of being levied
- 6.3 The Supplier shall pay, and shall indemnify Council against, all duties, taxes, levies, charges and impositions of whatever nature (whether parliamentary, municipal or otherwise) which may now or at any time be imposed or levied in respect of supply of the Goods or Services and all fines, penalties, losses, claims, costs, demands and expenses sustained or incurred by Council concerning any of them.
- 6.4 The Supplier agrees that I shall at all times indemnify and hold harmless Council, its officers, employees and agents (those indemnified) against all losses and additional expenses including legal costs and expenses on a solicitor/own client basis, and liabilities reasonably incurred or suffered by those indemnified, caused by any wilful, unlawful, or negligent act or omission of the Contractor, its officers, employees, agents, or subcontractors in connection with this Purchase Order and Contract and which arises from any claim, suit, demand, action, or proceeding by any person. The Contractor's duty of indemnity to Council under this Clause shall be reduced proportionately to the extent that any wilful, unlawful, or negligent act or omission of Council, its officers, employees or agents contributed to the loss or liability.
- 6.5 The warranty commences on the day of delivery or acceptance of the Goods and Services, whichever occurs last. It shall be valid for 90 days, or the length of the Contractor's or Manufacturer's standard warranty period, whichever is longer. The conditions and the period for completing warranty work are 10 business days from notification of Council.

- 6.6 Despite any other clause in this Agreement, Council may, by notice in writing to the Supplier, terminate this Agreement at its discretion at any time and for any reason. Other than as set out in this Agreement, Council will have no obligation to compensate the Supplier in any way for such termination.

## **7. RISK MANAGEMENT AND OCCUPATIONAL HEALTH AND SAFETY**

- 7.1 The Supplier shall comply with all requirements under the Occupational Health and Safety Act 2000, OHS Regulation 2001 and Protection of the Environmental Operations Act that are applicable to this Agreement and the supply of the Goods or the performance of the Services, including, without limitation, its obligations as an employer.
- 7.2 Prior to delivering the Goods or supplying the Services, the Supplier must enquire of Council whether there is a Principal Contractor responsible for the location to which the Goods are to be delivered or the Services supplied, as set out in this Purchase Order. The Supplier must comply at its cost with all directives given by the Principal Contractor when delivering the Goods or supplying the Services.
- 7.3 The Supplier must indemnify and keep indemnified Council against all costs, damages or liabilities which may be imposed under, or which may arise out of enforcement of, any section of the Occupational Health and Safety Act 2000, OHS Regulation 2001 and Protection of the Environment Operations Act, or any breach of this clause by the Supplier.

## **8. INSURANCE AND WORKERS COMPENSATION**

- 8.1 Before the Supplier commences the supply of the Goods or the Services, the Supplier shall obtain adequate and sufficient insurance to protect the interests of the Supplier and Council under this Agreement, including without limitation public liability insurance of at least \$10,000,000 and workers' compensation obligations and insurance. The Supplier shall maintain such insurances for the duration of this Agreement, and if necessary thereafter for such time as is reasonable. The Supplier must ensure their insurances and workers compensation obligations adequately cover their employees and subcontractors.
- 8.2 The Supplier shall effect and maintain any other insurances as Council may reasonably instruct, including without limitation, professional indemnity or any other insurance.
- 8.3 The Supplier must produce on demand by Council, evidence satisfactory to Council that the insurances referred to in clauses 8.1 and 8.2 have been obtained and are being maintained by the Supplier. If the Supplier fails to produce such evidence, Council may itself effect the insurance and the premium of such policies shall be a debt due and owing from the Supplier to Council.
- 8.4 If Council requests evidence of insurance from the Supplier under clause 8.3, no money shall be payable to the Supplier under this Agreement until such time as the request under clause 8.3 has been complied with by the Supplier.

## **9. GST AND PAYG**

- 9.1 In this clause the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- 9.2 Unless otherwise stated, all amounts payable under this Agreement include GST at the rate of 10%.
- 9.3 If the rate of GST is varied, the consideration payable for any supply under this Agreement will be varied to reflect the change of rate and any reduction in any other tax, duty or statutory charge connected with the rate change.
- 9.4 If this Agreement requires a party to reimburse or indemnify the other party for any expense, loss or outgoings ("reimbursable expense") the amount required to be paid by the first party will be the sum of:

- (a) the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense ("**net amount**"); and
  - (b) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.
- 9.5 If a GST inclusive price is charged or varied, the supplier will deliver to the recipient a valid tax invoice or adjustment note at or before the time of payment. The recipient can withhold payment of the GST until the supplier provides a valid tax invoice or adjustment note as appropriate.
- 9.6 "Pay As You Go" withholding amounts will be deducted from payments to be made to the Supplier if at the time of payment the Supplier has not provided to the Principal a valid Australian Business Number or if the Principal otherwise reasonably forms the view that deductions are required to be made under Part 2-5 of *Taxation Administration Act 1953*.