



## Purchase Order Terms and Conditions

### 1. Application

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1.1 These Purchase Order Terms and Conditions apply to any Purchase Order issued by Council for the provision of goods or services ("**Deliverable**"), and must be read with any contract or deed specified in an individual Purchase Order. If there is any inconsistency between these Purchase Order Terms and Conditions and any contract or deed specified in an individual Purchase Order, the contract or deed will prevail.

1.2 For the avoidance of doubt, terms and conditions proposed by the Contractor do not apply. Without limitation, if any terms and conditions of the Contractor are provided to Council in respect of the same subject matter (in whole or in part), including if those terms and conditions are printed on a delivery docket, those terms and conditions:

- (a) will not be legally binding;
- (b) will not form part of these Purchase Order Terms and Conditions; and
- (c) will not be capable of modifying or altering these Purchase Order Terms and Conditions in any way,

including in circumstances where a representative of Council signs or otherwise indicates its acceptance of the terms and conditions of the Contractor.

### 2. Performance of Services

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The Contractor must perform the Deliverable in strict compliance with these Purchase Order Terms and Conditions, unless varied in accordance with clause 12.

### 3. Warranties

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3.1 The Contractor warrants to Council that the Deliverable:

- (a) is free from Defects in material and workmanship;
- (b) is fit for the purpose;
- (c) conforms with all applicable Australian Standards and codes and Legislative Requirements;
- (d) conforms with the Documents;

(e) is free from infringement of (and will not infringe) any registered patent, design and trademark, copyright or any other protected intellectual property right;

(f) will be delivered to the requested address on the Completion Date; and

(g) will be completed on the Completion Date.

3.2 If the Deliverable relates to the provision of goods, the Contractor must, prior to Completion, procure and provide to Council manufacturers' warranties on the best terms available on the market for any goods which are supplied. The Contractor must ensure that any warranty offered by a manufacturer of the goods is enforceable by Council.

### 4. Completion Date and Delivery

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4.1 Unless agreed in writing by the parties, the Contractor must:

(a) if the Deliverable comprise the provision of goods, deliver the goods to the Delivery Address on the Completion Date; and/or

(b) if the Deliverable comprise the provision of works and/or services, complete the services by the Completion Date; and

(c) promptly notify Council of anything which may cause delay to the Deliverable, giving complete details of the cause and estimated delay.

4.2 Council may, in its absolute discretion, extend the Completion Date by giving written notice to the Contractor.

4.3 If the Deliverable comprises the provision of goods, the goods must be suitably packaged and protected to ensure their safe delivery to Council.

4.4 When delivered, the goods must be accompanied by a delivery docket which must be signed by a representative of Council.

### 5. Ownership and Risk

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5.1 The Contractor acknowledges and agrees that:

(a) the title in the Deliverable will pass to Council on the earlier of:

- (i) payment by Council, or

- (ii) acceptance or completion of the Deliverable pursuant to clause 6, and
- (b) the Contractor assumes all risk in the Deliverable until the Deliverable is accepted by Council.

## **6. Acceptance and Rejection**

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- 6.1 Council may reject the whole or any part of the Deliverable if Council believes the Deliverable contains Defects or do not conform to the Contract.
- 6.2 If the Deliverable comprises the provision of goods, Council may unpack, inspect and test the goods to ensure that the goods conform to the Contract. Any unpacking, inspection and testing of the goods will not constitute acceptance of the goods by Council.
- 6.3 Council may, after acceptance, reject the Deliverable if Council reasonably believes the goods contain Defects or do not conform to the Contract.
- 6.4 If Council rejects the Deliverable (or any part of the Deliverable), the Contractor must collect the defective Deliverable and promptly replace them, at the Contractor's expense, or (if requested by Council) refund to Council any amount paid to the Contractor for the defective Deliverable.

## **7. Work Health and Safety**

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- 7.1 The Contractor must comply, and ensure that its workers engaged in the performance of the Deliverable, comply with the WHS Legislation and relevant Australian Standards and codes.
- 7.2 All hazardous chemicals supplied to Council or otherwise used in the provision of the Deliverable must comply with the requirements of the Globally Harmonised System of Classification and labelling of Chemicals ("GHS").
- 7.3 The Contractor must provide to Council not later than at the time of delivery or use in the Deliverable (as applicable) of those hazardous chemicals a current Safety Data Sheet ("SDS").
- 7.4 All hazardous chemicals supplied to Council (or used in the provision of the Deliverable) that do not comply with the GHS or are not accompanied by a current SDS will be rejected by Council.

## **8. Fee and Payment**

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- 8.1 On Completion of the Deliverable, the Contractor must invoice Council the Fee as specified on the Purchase Order, or, if a deed applies, in accordance with the schedule of rates, which is inclusive of all taxes (including GST), insurance and delivery cost.

- 8.2 The tax invoice must identify the Purchase Order number, describe the Deliverable and be a valid tax invoice under relevant GST laws.
- 8.3 Council will assess each tax invoice issued by the Contractor under this clause 8, and if the Deliverable conforms to the Contract, Council will pay the Contractor the sum invoiced within 30 days from the date specified on the tax invoice or as required by law.
- 8.4 Council may deduct from any moneys otherwise payable to the Contractor any money due from the Contractor to Council or claimed by Council from the Contractor, whether under the Contract or otherwise at law.

## **9. Suspension**

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- 9.1 Council may at any time and for any reason suspend the provision of the Deliverable under the Purchase Order by written notice to the Contractor.
- 9.2 The Contractor must cease the provision of the Deliverable as instructed under the notice of suspension.
- 9.3 The Contractor must resume the provision of the Deliverable once notified by Council to do so.
- 9.4 The Contractor will bear the cost of a suspension directed under this clause 9, unless the suspension was due to an act or omission of Council.

## **10. Breach and Termination**

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- 10.1 A party may immediately terminate the Contract by notice in writing to the other party if:
  - (a) the other party ("**Breaching Party**") commits a material breach of the Contract; and
  - (b) the breach is not rectified to the reasonable satisfaction of the non-breaching party within seven (7) days of the written notice served on the Breaching Party.

## **11. Indemnity**

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- 11.1 To the extent permitted by law, the Contractor indemnifies Council from and against all liability, losses, damages, costs and expenses arising out of or in connection with:
  - (a) loss or destruction of or damage to the Deliverable, the risk of which the Contractor has assumed pursuant to clause 5;
  - (b) loss of (including loss of use of), damage to, or destruction of any property; or

(c) personal injury (including psychological injury) or death of any person, to the extent caused or contributed to by any act, omission or breach of the Contract by the Contractor.

11.2 Clause 11.1 does not apply to the extent that the liability, loss, damage, cost or expense is contributed to by any breach of the Contract by Council or negligent or unlawful act or omission of Council.

11.3 Clauses 11.1 and 11.2 do not exclude any other right of Council at law.

## 12. Variation

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12.1 Council may at any time vary the Purchase Order by written notice to the Contractor.

12.2 If a Variation directed pursuant to clause 12.1 causes an increase or decrease in the Fee, the Fee must be adjusted accordingly.

12.3 If a Variation directed pursuant to clause 12.1 causes an increase in time, the Contractor may be entitled to an equivalent extension of the Completion Date.

12.4 No Variation of the Purchase Order will be binding on Council unless notified in writing by Council to the Contractor.

## 13. General

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13.1 Any notice to be given or served in relation to the Contract must be in writing and delivered by hand or sent by prepaid post to the relevant postal address (deemed received 5 days after posting), or email address of the Contractor's representative or Council's representative (deemed to have been received once sent unless the sender receives notice that the email transmission has been unsuccessful or could not be delivered or an out of office notice indicates that the recipient is unavailable) as stated in the Purchase Order or last notified in writing to the party giving the notice by the party to whom or upon which the notice is to be given or served.

13.2 Any email sent on a day which is not a Business Day will be deemed not to have been received until the next Business Day.

13.3 The Contractor must comply with Council's Code of Conduct and the Statement of Business Ethics (available on Council's website) when performing its obligations under the Contract.

13.4 The Contractor must not assign, novate or subcontract any part of its rights or obligations under the Contract without the prior written consent of Council.

13.5 The Contract will be governed by the law of New South Wales and the parties submit to that exclusive jurisdiction.

## 14. Interpretation

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14.1 In these Purchase Order Terms and Conditions:

(b) "**Business Day**" means any day other than a Saturday, Sunday or public holiday in New South Wales or the days from 26 to 31 December inclusive.

(c) "**Completion**" means the stage in the performance of the Deliverable where:

(i) the Deliverable is complete except for minor omissions or minor defects; or

(ii) the Deliverable has been accepted by Council in accordance with clause 6; and

(iii) the Deliverable complies with all Legislative Requirements; and

(iv) all warranties required under the Contract have been supplied to Council; and

(v) any other matter or condition required under the Contract to be achieved or satisfied prior to Completion has been achieved or satisfied.

(d) "**Completion Date**" means:

(i) if the Deliverable comprise the provision of goods, the date by which the goods must be delivered; or

(ii) if the Deliverable comprise the provision of works and/or services, the date by which the works and/or services must be completed,

as identified in the Contract.

(e) "**Contract**" means these Purchase Order Terms and Conditions and the Documents.

(f) "**Contractor**" means the legal entity identified on the Purchase Order.

(g) "**Council**" means the Campbelltown City Council (ABN 31 459 914 087).

(h) "**Delivery Address**" means the place specified by Council on the Purchase Order for the delivery.

(i) "**Defects**" means any defect or omission in the Deliverable including any aspect of the Deliverable which is not in accordance with the Contract.

(j) "**Deliverable**" means in the context of the particular Purchase Order:

(i) the provision of the goods; and/or

(ii) the provision of works and/or services,

as described in the Documents.

(k) "**Documents**" means any documents, including maps, specifications and drawings, provided by Council to enable the Contractor to provide the Deliverable.

(l) "**Fee**" means the amount payable for the Deliverable as set out in the Purchase Order, which is inclusive of GST.

- (m) “**Legislative Requirement**” means any statute, regulation, order, rule, subordinate legislation or other obligation enforceable under any statute, regulation, order, rule or subordinate legislation.
- (n) “**Purchase Order**” means a document entitled “Purchase Order” issued by Council, incorporating any Documents the subject matter of the Purchase Order.
- (o) “**Variation**” means any change to the Deliverable including any addition,

increase, decrease, omission, deletion, demolition or removal to or from the Deliverable.

- (p) “**WHS Legislation**” means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

\*\*\*\*\* End of Document \*\*\*\*\*