

NELSON CITY COUNCIL PURCHASE ORDER TERMS AND CONDITIONS

13 February 2017

These terms & conditions apply to all Purchase Orders issued by the Council on or after 13 February 2017 until further notice.

1. Formation of Contract

- 1.1 These Terms and Conditions set out the terms and conditions applying to all purchases of Goods and/or Services by Nelson City Council (**Council**) where implied or referred to in an Order.
- 1.2 For the purposes of these Terms and Conditions references to the "Supplier" are references to the party providing the Goods and/or Services pursuant to the applicable Order.
- 1.3 Subject to clause 1.5, a contract for the sale and purchase of Goods and/or Services (**Contract**) will arise on the Supplier's acceptance of an Order (whether by written acknowledgement or by Delivery). The Contract will comprise:
 - (a) the Order; and
 - (b) these Terms and Conditions.
- 1.4 In the event of any inconsistency between the terms of the relevant Order and these Terms and Conditions, the terms of the relevant Order will prevail.
- 1.5 These Terms and Conditions shall apply to all purchases of Goods and/or Services by Council where referred to the applicable Order and where the Order is silent as to the applicable contract terms. These Terms and Conditions do not apply to the purchase by the Council of Goods and/or Services pursuant to a written contract.
- 1.6 Subject to clause 1.5 the terms of the relevant Order together with these Terms and Conditions comprise the entire agreement of the parties in relation to the applicable supply of Goods and/or Services and supersede any previous discussions, arrangements and representations. Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Goods and/or Services (for example, the Supplier's standard purchase terms and conditions) will not apply.
- 1.7 Orders may be placed by any department of the Council. In all such cases, Council is the principal contracting party and is solely responsible for the obligations arising under the Contract.
- 1.8 If an Order is not accepted by the Supplier's written acknowledgement or Delivery within 10 Days of the date of the Order, Council may, by written notice to the Supplier, cancel the Order.
- 1.9 Any estimates provided by the Council in relation to a Purchase Order are provided for the assistance of the Supplier. Such estimates do not form part of the contract and do not in any way give rise to any price adjustment claim by the Supplier.

2. Terms of payment

- 2.1 The Delivery of all Goods must be accompanied by detailed advice notes (packing slips)
- 2.2 The Supplier shall:
 - (a) following completion of the Delivery of the Goods and/or Services, send a valid tax invoice to the Council at the address stated in the Order; and
 - (b) ensure that all invoices, packing slips, advice notes and correspondence contain the Purchase Order Number and any other information specified in the Order or as reasonably requested by the Council.
- 2.3 The Supplier's tax invoice must:
 - (a) be typewritten (either computer generated or typed), and must not be handwritten;
 - (b) be sent by email to creditors@ncc.govt.nz ;
 - (c) include the Supplier's GST number and any other information for a valid tax invoice (if applicable);
 - (d) include the relevant Purchase Order Number;
 - (e) include a description of the Goods and/or Services supplied and any relevant dates of Delivery;
 - (f) show the total payable by the Council, with details of how this amount has been derived; and
 - (g) ensure the invoice is clearly addressed to the Council.
- 2.4 The Supplier acknowledges that payment may be delayed if Council's invoicing and payment process requirements (as set out in these Terms and Conditions) are not followed by the Supplier.
- 2.5 Subject to compliance with these Terms and Conditions and there not being manifest errors or discrepancies, the Supplier's invoice for the Goods and/or Services will be paid by Council on the 20th day of the month following the date of the invoice or the next Working Day, provided the invoice has been received by the Council no later than the 5th day of the month.

Example: For monthly goods or services provided in January:

 - A valid invoice dated 31st January and delivered by 5th February will be paid on 20th February
 - A valid invoice dated 31st January and delivered between 6th February and 5th March will be paid on 20th March.

2.6 If any aspect of a tax invoice or the Delivery of the Goods and/or Services is disputed by Council, Council may withhold payment of the relevant invoice or part thereof until such time as the dispute is resolved.

2.7 In making payment for the Goods and/or Services, Council may withhold, deduct or set off any amount that was previously overpaid or any amount recoverable by Council from the Supplier under the Contract or otherwise.

2.8 For supplies of Services that are applicable, unless a valid Certificate of Exemption is provided prior to the Delivery of the Services, the Council will deduct Withholding Tax (Scheduler Payments) as set out in the Income Tax Act 2007. A signed Tax Code Declaration will be required.

2.9 For supplies of Goods and/or Services that are applicable, unless a valid Certificate of Exemption is provided prior to the Delivery Goods and/or Services, Council will deduct Non-Resident Withholding Tax as set out in the Income Tax Act 2007.

3. Packing, delivery and installation

3.1 The Supplier must obtain a valid Purchase Order Number from the Council before supplying Goods and/or or Services.

3.2 Goods supplied against an invalid Purchase Order may be returned at the Supplier's expense including the cost of packing, transporting, insuring and handling of the rejected Goods.

3.3 The Supplier is responsible for the safe and undamaged delivery of all Goods to the Council. The Supplier will adequately pack and protect the Goods against damage and deterioration, at the Supplier's expense.

3.4 The Supplier must Deliver the Goods and/or Services not later than the time/s specified in the Order or, if no time is specified in the Order, within a reasonable time of the date of the Order. In this regard time is of the essence.

3.5 The Supplier is responsible for the removal and disposal of all packing containers and materials.

3.6 If an emergency or disaster occurs, the Supplier will use its best endeavours to provide or delay Delivery as requested by the Council.

3.7 Where required by the Order the Supplier will install the Goods at the Site in accordance with the Installation Instructions, all applicable industry and good practice standards, all statutory and regulatory requirements and with due care and skill.

3.8 The Supplier shall deliver and install the Equipment in accordance with all reasonable Council instructions.

3.9 The Supplier shall provide all standard manufacturer or supplier warranties and guarantees relating to the Goods to the Council.

4. Acceptance of Goods

4.1 The Goods shall be accepted by the Council on completion of Delivery and (where applicable) installation and on the Council being satisfied that the Goods are to specification and, where the Supplier is responsible for installation, are correctly installed and functioning.

5. Passing of title and risk

5.1 Property in the Goods and risk passes to the Council on Delivery to and acceptance by the Council.

5.2 Property in the Goods passes to the Council free of any prior interest or encumbrance.

5.3 The Supplier warrants it has the right to sell the Goods.

6. Warranties

6.1 In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to Council and in relation to Goods that are intended to be on sold to customers of the Council in the ordinary course of Council's business for the benefit of such purchasing customers that:

(a) The Goods are (unless specified otherwise in the Order) new, in good order and merchantable condition and are fit for the purpose for which it is intended as stated in any product specification or requirements set out in the Order or provided by the Council or otherwise as held out by the Supplier;

(b) The Goods comply with all applicable product standards and regulatory or other statutory requirements;

(c) the Goods and/or Services will comply with any specifications supplied by the Council or agreed between the parties, will be fit for any purpose that Council makes known to the Supplier and will comply with all applicable legislation, regulations, standards and codes of practice;

(d) at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance;

(e) the Supplier has all Intellectual Property rights relating to the Goods and/or Services required for the Goods and/or Services to be provided to Council and neither the Goods and/or Services, nor the provision or use of the Goods and/or Services by Council will breach any Intellectual Property rights of any third party;

(f) the Goods and/or Services will be Delivered at the time specified on the Order or, if not specified, within a reasonable time of placing the Order;

(g) the Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience; and

(h) in the supply of the Goods and/or Services, the Supplier will comply with all applicable legislation, regulation and industry codes of practice.

7. Default and termination

7.1 If the Supplier does not supply or Deliver Goods and/or Services in accordance with the Contract, then, at the sole option of the Council, and without prejudice to any other remedy or right of the Council under this Contract or at law, Council may:

(a) If the breach to Goods, reject the Goods in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense including the cost of packing, transporting, insuring and handling the rejected Goods and the Supplier must immediately reimburse Council for any monies paid in respect of the returned Goods; or

- (b) If the breach to Goods, require the Supplier to replace, repair, reinstate or re-supply the Goods at the Supplier's expense so that they conform to the Contract or may have the Goods replaced, repaired or re-supplied by another person and recover the cost of doing so from the Supplier; or
- (c) If the breach relates to Services, require the Supplier to perform the Services again to the required standard at the Supplier's expense or may have the Services provided by another person and recover the cost of doing so from the Supplier; or
- (d) If the breach relates to health and safety obligations of the Supplier, immediately terminate (or suspend Supplier's performance of) this Contract in whole or in part and/or any Order by written notice to Supplier; and/or
- (e) suspend payment for the Goods and/or Services until the breach has been remedied to Council's reasonable satisfaction.

Any Supplier costs or delay arising from a suspension pursuant to this clause shall be the responsibility of the Supplier.

7.2 Either the Council or the Supplier may terminate this Contract immediately by notice in writing if the other party commits any material breach of this Contract and fails to remedy the breach within 15 Working Days of receiving written notice of such breach. (Such notice must specify it is given under this clause and that termination may follow if the breach is not remedied).

7.3 The Council may immediately terminate this Contract, by giving written notice of termination to the Supplier, if any of the following events occur:

- (a) The Supplier having a petition presented or an order made or an effective resolution passed or analogous proceedings taken for its bankruptcy, liquidation, dissolution or winding up (except for the purposes of solvent reconstruction);
- (b) The Supplier having an encumbrancer, receiver, liquidator, trustee or similar officer take possession of or be appointed with respect to all or any part of its business, assets, or undertakings;
- (c) The Supplier abandons or repudiates this Contract.
- (d) The Supplier fails to deliver the Goods within five Working Days of the Delivery Date; or
- (e) The Goods or a material portion of the Goods are defective.

7.4 No failure or delay on the part of Council to exercise any of its rights in respect of any default by the Supplier will prejudice Council's rights in connection with that default or any subsequent default.

7.5 Termination of the Contract and/or cancellation of an Order does not affect any responsibilities which are intended to continue or come into effect after the Contract terminates.

8. Indemnity

8.1 The Supplier will fully protect, indemnify and hold harmless the Council, its officers, employees and

agents from and against any liability, losses, damages, actions, proceedings, claims, demands, costs and expenses including solicitor and own client costs, incurred in connection with any breach by the Supplier of any term of the Contract or the negligent or wrongful act or default of the Supplier or any of its employees, subcontractors or agents. This obligation continues after the termination or expiry of the Contract.

8.2 Records and information requests: The Supplier must keep full records and documentation in relation to the Services and this Contract (**Records**) and provide copies of Records to the Council on reasonable request.

9. Relationship between parties

9.1 Nothing in the Contract should be interpreted as constituting either Council or the Supplier, an 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 the Contract.

9.2 Council's relationship with the Supplier is not exclusive.

9.3 The Supplier acknowledges that where Council acquires Goods or Services as a consumer (as that term is defined in the Consumer Guarantees Act 1993), then that act applies to the acquisition of the Goods or Services.

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10. Confidentiality

10.1 All Confidential Information will be and will remain the property of Council, and the Supplier must:

- (a) keep all Confidential Information confidential and use the Confidential Information only for the purpose of the Contract;
- (b) not disclose any Confidential Information to any person without the prior written consent of Council (unless the disclosure is required under law); and
- (c) destroy or return the Confidential Information to Council upon Council's request at any time, provided that the Supplier may disclose Confidential Information to its employees, subcontractors and advisers to the extent necessary for the purposes of the Contract. The Supplier will ensure that its employees, subcontractors and advisers will comply with these obligations of confidentiality.

10.2 The Supplier will not use Council's name in advertising its business or activities without the prior written consent of Council, and will comply with all reasonable terms and conditions upon which such permission may be given.

10.3 Upon request, the Supplier will provide to Council a copy of any record on the Supplier's file or within the possession or control of the Supplier, where receipt of such record may be reasonably required by Council.

10.4 This clause 9 survives termination and expiry of the Contract.

11. Official Information legislation

11.1 The parties acknowledge that Council is subject to the Local Government Official Information and Meetings Act 1987 and that under that Act the Council may be required to release information about this Contract and the Supplier.

11.2 In addition, the Supplier agrees to comply with the requirements of the Local Government Official Information and Meetings Act 1987 in relation to all information relating to the Council held by the Supplier or its employees.

11.3 The Supplier will only release information to a third party under the Local Government Official Information and Meetings Act 1987 through the Council unless compelled by a competent authority, in which case it will immediately advise the Council as to the information released.

12. Health and safety

12.1 The Supplier shall, in the delivery and installation of the Goods and/or the provision of the Services, comply with its obligations under the HSW Act, all regulations made under the HSW Act and all approved codes of practice under the HSW Act.

12.2 Where the Supplier has sole possession of the Site the Supplier shall, for the purposes of s.37(1) and s.38(1) of the HSW Act, be the PCBU who manages or controls the Site and the fixtures, fittings and plant on the Site.

12.3 Unless the Supplier holds a current health and safety pre-qualification approval from Council, the Supplier will provide a copy of its health and safety plan to the Council prior to commencing the delivery and installation of the Goods and/or the provision of the Services. In either case the Supplier will provide any updates or revisions to the health and safety plan to the Council within 10 days of making any such changes.

12.4 Where indicated in the Order, the Supplier shall provide its contract specific health and safety plan to the Council prior to commencing the delivery and installation of the Goods and/or the provision of the Services. The safety plan shall cover all aspects of the management of health and safety in relation to the delivery and installation of the Goods and/or the provision of the Services including (without limitation) the coordination of health and safety management with all other separate contractors on Site and with all subcontractors and suppliers when their personnel are on Site.

12.5 The Supplier will also comply with all Council health and safety policies and procedures set out in notified by the Council.

12.6 Where applicable the Supplier will consult with each other party that has duties as a PCBU in relation to the Site and the delivery and installation of the Goods and/or the provision of the Services.

12.7 The Supplier shall notify the Council promptly after any of the following occurs:

- (a) an accident or an incident notifiable to the Council in terms of such policies and procedures;
- (b) a hazardous situation which the Supplier becomes aware of in relation to this Contract; and
- (c) a notifiable event under the HSW Act.

12.8 The Supplier shall

(a) maintain a register of accidents and serious harm;

(b) investigate accidents and identify their cause;

(c) ensure that all persons under the Supplier's control are appropriately supervised; and

(d) provide written notification (and copy to the Council) to the regulator of all notifiable events in accordance with section 56 of the HSW Act.

12.9 The Supplier shall give to the Council a copy of any report which the Supplier is required to make to a public authority on any accident which is associated with the delivery and installation of the Goods and/or the provision of the Services and results in serious harm to any person.

12.10 The Council may require the Supplier to cease the delivery and installation of the Goods and/or the provision of the Services (or any part of the Services) where in the Council's reasonable view the continued carrying out of such would (or be likely to) constitute a breach of the HSW Act, the health and safety provisions in this Contract or be a danger to persons or property.

13. Intellectual property

13.1 All Intellectual Property owned by either party and existing prior to the commencement of the Delivery and installation of Goods and/or Services will remain the exclusive property of that party.

13.2 The Supplier agrees that, unless specified otherwise in the Order, all new Intellectual Property that arises or is created by the Supplier or any of the Supplier's employees, subcontractors or agents in the course of supplying the Goods and/or Services will be Council's exclusive property.

13.3 The Supplier grants to Council a perpetual, royalty free, non-exclusive licence to use all Intellectual Property owned by the Supplier under clause 11.1 that is required for the effective use the Goods and/or Services provided by the Supplier.

14. Assignment and subcontracting

14.1 The Supplier may not assign, subcontract or otherwise transfer any of its rights, benefits or obligations under the Contract without the prior written consent of Council. A change in the management or control of the Supplier or the sale of a major part of the Supplier's business or assets will be deemed to be an assignment for the purposes of this clause.

14.2 Where Council consents to the Supplier assigning, subcontracting or transferring any of its obligations under, or aspect of, this Contract to a third party, the Supplier will remain fully responsible for all obligations to Council under the Contract.

15. Notices

15.1 Any notice to be given under the Contract must be in writing and may be served personally, sent by email or other electronic method or sent by registered mail to the usual business address of each party.

15.2 All notices or communications shall be deemed to have been duly given or made:

(a) in person is deemed served upon delivery;

(b) by email or other electronic method is deemed to be served at the time the communication enters the recipients system;

(c) by registered mail is deemed to be served three Working Days after the date of posting.

15.3 Any such notice which has been served after 5.00pm or on a non-Working Day is deemed served on the first Working Day after that day.

16. Regulatory capacity

16.1 To the extent that Council has regulatory authority or powers (**Regulatory Capacity**), this Contract does not bind or fetter Council (or any other entity in the Nelson City Council group) in its Regulatory Capacity.

16.2 The Supplier will not be entitled to any damages or other payment should Council acting in its Regulatory Capacity, either decline any consent or permission, issue any consent or permission on terms that are unsatisfactory to any party or for any act or omission by Council in its Regulatory Capacity.

17. Severance

17.1 The illegality, invalidity or unenforceability of any provision in this Contract will not affect the legality, validity or enforceability of any other provisions.

18. Waiver

18.1 No right under this Contract shall be deemed to be waived except by notice in writing signed by the party providing the waiver.

18.2 A waiver by either party will not prejudice its rights in respect of any subsequent breach of this Contract by the other party.

18.3 Any failure by either party to enforce any clause of this Contract, or any forbearance, delay or indulgence granted by a party will not be construed as a waiver of that party's rights under this Contract.

19. Subcontracting

19.1 The Supplier shall not subcontract all or any material part of its obligations under this Contract without the Council's prior written approval.

20. Set off

20.1 The Council may and is hereby authorised by the Supplier to deduct any moneys payable by the Supplier to the Council from any moneys payable by the Council to the Supplier under this Contract.

21. Governing Law and Jurisdiction

21.1 This Contract will be governed by and construed according to the law of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

22. Interpretation

22.1 In these Terms and Conditions:

Accepted and Acceptance means the acceptance of the Goods by the Council in accordance with clause 4.1.

Contract means the contract between the Council and the Supplier arising pursuant to clause 1.3.

Council means the Nelson City Council

Confidential Information includes the terms of the Contract (including the details of any Order), information provided by the Council in relation to any Order which is identified by Council as being confidential and information that would reasonably be considered to be confidential, except information that is public knowledge.

Delivery means, in the case of Goods, the delivery of the Goods the Site nominated by Council. in relation to Services the completion of the provision of the

Services and in both cases the Acceptance of the Goods and/or Services by the Council and Deliver has a corresponding meaning.

Goods means the goods, materials or substances specified in the applicable Order and all parts or components of the same.

GST means goods and services tax chargeable under the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

HSW Act means the Health and Safety at Work Act 2015.

Installation Instructions means the installation instructions in relation to Goods set out in the applicable Order.

Intellectual Property means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and, without limitation, includes inventions, discoveries and novel designs, whether or not registered or registerable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright may subsist now or in the future; confidential information, trade secrets and trademarks, including service marks and trading names (whether registered or unregistered).

Order means an official Council purchase order which may be placed with the Supplier from time to time containing a reference to these Terms and Conditions.

Purchase Order Number means the number set out on the Order as relating to that particular purchase.

Services means the services specified in the applicable Order to be provided or performed by the Supplier.

Site means the site or address to which the Goods are to be delivered (and where applicable installed) as set out in the applicable Order.

Supplier means the person, firm, company or corporate entity to whom Council issues an Order..

Working Day means any day other than a Saturday, Sunday or a public holiday in Nelson.

Terms and Conditions mean these terms and conditions.

22.2 In these Terms and Conditions:

(a) All monetary amounts are exclusive of GST and in New Zealand dollars unless provided otherwise.

(b) Where the context permits the singular includes the plural and vice versa.

(c) References to any party means the parties to this Contract and includes their respective successors and permitted assignees (as the case may be).

(d) References to clauses, schedules and to any attachments are to clauses, schedules and attachments (if any) to these Terms and Conditions (unless otherwise stated).

(e) Where the context permits references to the Supplier include the Supplier's employees, agents and officers.

- (f) All references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation.
- (g) References to a person include a natural person, firm, corporation, association or other entity whether incorporated or not and whether or not having a separate legal personality.

- (h) Obligations that bind more than one person shall bind those persons jointly and severally.
 - (i) Defined expressions are signified by capitalisation.
 - (j) The headings in this Contract shall not be used in its interpretation.
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