

# Whitehorse City Council

## PURCHASE ORDER TERMS & CONDITIONS

### 1. GENERAL

- 1.1 These are the Terms & Conditions applying to a Purchase Order issued by Council.
- 1.2 By accepting the Purchase Order, a Supplier of Goods and/or Services (the Supplier) or a Contractor engaged to perform Works (the Contractor) agrees to be bound by these Terms & Conditions and a Contract is created between the parties.
- 1.3 The Supplier/Contractor must supply the Goods, provide the Services and/or perform the Works in accordance with these Terms and Conditions.

### 2. NATURE OF THE GOODS

If the Purchase Order relates to the supply of Goods -

- 2.1 The Goods must –
- (a) be of Merchantable Quality;
  - (b) not be Defective Goods; and
  - (c) must be new, unless specified otherwise in the Purchase Order.
- 2.2 Goods which are not of Merchantable Quality, means Goods which –
- (a) fail to reach a basic level of quality;
  - (b) are not fit for purpose;
  - (c) do not match the description; and/or
  - (d) do not match the sample.
- 2.3 Goods which are Defective Goods, means Goods which are not in conformity with these Terms and Conditions being either defective in design, performance, workmanship, makeup or otherwise.

# **Whitehorse City Council**

## **PURCHASE ORDER TERMS & CONDITIONS**

### **3. DELIVERY OF GOODS**

- 3.1 The Supplier is responsible for ensuring the correct Goods are properly packed and delivered to Council.
- 3.2 If the Supplier delivers incorrect Goods, those Goods may be returned at the Supplier's expense.

### **4. TITLE AND RISK**

Title and risk in the Goods passes to Council upon payment of the Purchase Order price and delivery and acceptance of the Goods.

### **5. PROVISION OF SERVICES**

If the Purchase Order relates to the provision of Services, the Supplier must in performing the Services -

- (a) exercise due skill and care;
- (b) make sure that any materials used are fit for the purpose;
- (c) use their best efforts and ensure that their employees, agents, contractors and sub-contractors use their best efforts, not to interfere with any of the Council's activities, or the activities of any other person on Council premises;
- (d) comply with, and ensure their employees, agents, contractors and sub-contractors comply with all applicable laws and regulations including Occupational Health & Safety guidelines, rules and procedures;

# **Whitehorse City Council**

## **PURCHASE ORDER TERMS & CONDITIONS**

- (e) provide progress reports where requested by Council;
- (f) comply with any Council security requirements;
- (g) ensure that Council premises are left secure, clean, orderly and fit for immediate use.

### **6. PERFORMANCE OF WORKS**

If the Purchase Order relates to the performance of Works, the Contractor must in performing the Works –

- (a) exercise reasonable skill, care and diligence in performing the works and shall comply with all applicable standards, safety regulations, codes of practice and any specific requirements resulting from the Contractor's trade, profession or expert knowledge;
- (b) not vary the works from the description in the Works contained in the Purchase Order without the prior written consent of Council;
- (c) complete the works to the satisfaction of Council with due expedition, without delay and within the time specified in the Purchase Order or such further time as agreed in writing by Council;
- (d) provide, erect and maintain all barricades, fences, signs, lighting and temporary works necessary for the protection of the works, other property and for the safety and convenience of the public;
- (e) provide all supervision, labour, materials, plant, transport and temporary works which may be necessary;

# **Whitehorse City Council**

## **PURCHASE ORDER TERMS & CONDITIONS**

- (f) be responsible for the care of the works from the date of commencement until completion including the care, storage and protection of unfixed items and items provided by Council; and
- (g) Not vary the price of the works from the price agreed or undertake works which will incur additional fees or charges without the prior written consent of the Principal.

### **7. PRICE**

- 7.1 Following the satisfactory supply of Goods, provision of Services or performance of Works, Council agrees to pay the Supplier/Contractor the Price specified in the Purchase Order.
- 7.2 Unless the Purchase Order provides otherwise, the price is inclusive of –
  - (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with these Terms and Conditions;
  - (b) the cost of the Services (if any) to be provided with the Goods and any items used or supplied in conjunction with the Services;
  - (c) GST (unless the Purchase Order expressly states the price excludes GST); and
  - (d) all other Taxes.

### **8. INVOICING & PAYMENT**

- 8.1 The Supplier/Contractor must provide Council with an invoice upon delivery of the Goods, completion of the Services or performance of the Works.
- 8.2 The Purchase Order Number must be displayed on the Invoice.

# **Whitehorse City Council**

## **PURCHASE ORDER TERMS & CONDITIONS**

- 8.3 Invoices must be posted to Whitehorse City Council, Accounts Payable Department, Locked Bag 2, NUNAWADING DC VIC 3131 or emailed to [finance.ap@whitehorse.vic.gov.au](mailto:finance.ap@whitehorse.vic.gov.au).
- 8.4 Council will pay all invoices rendered on a 30 day payment cycle, generally within 30 days from the date of the invoice, except where the invoice is disputed in which case Council will -
- (a) pay the undisputed part of the relevant invoice (if any) and dispute the balance; and
  - (b) if the resolution of the dispute determines that Council is to pay an amount to the Supplier, Council will pay that amount upon resolution of that dispute.
- 8.5 No interest will be payable by Council in respect of any invoice rendered by the Supplier/Contractor which is due and remains unpaid.
- 8.6 If the Contract involves the supply of Goods on a cost plus basis, the Council may conduct an audit of the supply of Goods up to 12 months after receipt of the relevant invoice.
- 8.7 If the Contract involves the supply of Services on a cost plus or hourly basis, the Supplier must provide Council with any relevant documentation where requested, up to 12 months after receipt of the relevant invoice.

### **9. SPECIAL TERMS & CONDITIONS**

- 9.1 Any Terms & Conditions appearing on the Purchase Order are Special Terms & Conditions.

# **Whitehorse City Council**

## **PURCHASE ORDER TERMS & CONDITIONS**

9.2 If any such Special Terms and Conditions are inconsistent with these Terms and Conditions, the Special Terms and Conditions will, to the extent of the inconsistency, prevail.

### **10. INSURANCE**

10.1 The Supplier/Contractor will effect and maintain appropriate insurance policies.

10.2 The Supplier/Contractor will provide Council with evidence of cover by way of provision of a Certificate of Currency where requested.

### **11. INDEMNITY**

The Supplier/Contractor agrees to indemnify Council against any loss, damage, injury or expense incurred by Council as a result, whether directly or indirectly, of any breach of these Terms and Conditions, including any act or omission involving fault or negligence by the Supplier or Contractor.

### **12. TERMINATION**

Either Party may terminate the Contract by notice in writing to the other Party if the other Party does not perform any of its obligations under these Terms and Conditions and fails to rectify that breach following reasonable notice.

### **13. SUB-CONTRACTING & ASSIGNMENT**

13.1 The Supplier/Contractor must not, without Council's prior consent in writing, sub-contract or assign the whole or any part of the work under the Contract.

13.2 Despite any approval to sub-contract, the Supplier/Contractor remains fully responsible for the performance of its obligations under the Contract.

# **Whitehorse City Council**

## **PURCHASE ORDER TERMS & CONDITIONS**

### **14. CONFIDENTIAL INFORMATION**

Each Party undertakes that it will not, either during the term of the Contract or at any time thereafter (except in the proper course of its duties under the Contract or as required by law or by the other Party) disclose to any person any confidential information of or relating to the other Party.

### **15. CONFLICT OF INTEREST**

15.1 The Supplier/Contractor warrants that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract.

15.2 If, during the term of the Contract, a conflict or risk of conflict of interest arises, the Supplier/Contractor undertakes to notify Council immediately in writing of that conflict or risk.

### **16. VARIATION**

Any variation to these Terms and Conditions is binding only if agreed to in writing and signed by both Parties.

### **17. GOVERNING LAW & JURISDICTION**

17.1 The Contract is governed by and is to be construed in accordance with the laws of Victoria.

17.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Court of Victoria and waives any right to object to proceedings being brought in those Courts.