

Rous County Council Purchase Order Standard Terms

1. General

- (a) These standard terms and conditions (**Standard Terms**) apply to any Purchase Order (**Order**) issued by Rous County Council (**Council**) for:
- (i) work performed or services (**Services**) provided by the party specified in the Order (**Supplier**); and/or
 - (ii) goods (**Goods**) supplied by the Supplier.
- (b) These Standard Terms together with the Order, any written specifications from Council, and any written special conditions that Council includes with the Order (**Special Conditions**), constitute the entire agreement between the parties (**Agreement**) and apply to the exclusion of any preceding, subsequent or other terms and conditions unless expressly agreed in writing by Council.
- (c) In the absence of any express acceptance of the Standard Terms, delivery of the Goods or performance of the Services, constitutes acceptance by the Supplier. Unless the Council expressly accepts the Supplier's forms in writing, any terms and conditions provided by the Supplier, do not form part of this Agreement.
- (d) If there is any inconsistency between these Standard Terms and the Special Conditions, the Special Conditions will prevail to the extent of the inconsistency.

2. Supply and Delivery of Goods

- (a) If the Agreement is for or includes the supply of Goods, the Supplier must:
- (i) safely deliver the Goods in the quantities specified in the Order to the delivery place specified by Council within the timeframes specified in the Order;
 - (ii) ensure that the Goods are packaged so as to protect them from damage; and
 - (iii) ensure the Goods are accompanied by a packaging slip or delivery docket detailing the Goods and all relevant manufacturer's or supplier's instructions governing use of the Goods.
- (b) Delivery includes packaging, loading and unloading the Goods onto or from the transport vehicle and transporting the Goods to the delivery place.
- (c) If the Goods comprise any hazardous materials or dangerous goods, the Supplier must transport and store those Goods in accordance with all laws and must, prior to the delivery of the Goods, provide Council with the relevant product safety data sheets for those Goods.
- (d) Title in the Goods will pass to Council upon acceptance of the Goods. Risk in the Goods remains with the Supplier until acceptance of the Goods by Council.
- (e) The Goods will be accepted upon the Council issuing a notice of acceptance to the Supplier. If the Council fails to issue a notice of acceptance within 30 days of the date of delivery or the date of payment (whichever is the later), the Council will be taken to have accepted the goods.
- (f) Council may, at the time of delivery or otherwise within 30 days of delivery, reject the whole or part of the Goods if it reasonably determines that the Goods:
- (i) are defective; or
 - (ii) do not meet the requirements of this Agreement in all respects.
- (g) If Council rejects all or part of the Goods, the Supplier must comply with a requirement of Council (acting reasonably) to repair or replace the Goods in a manner directed by Council, or refund to Council any amount paid for the Goods (including delivery costs), failing which Council may engage others to repair or replace, as applicable, those Goods at the Supplier's cost.
- (h) The Supplier may not enter upon Council's premises to recover any Goods unless given written permission by Council.

3. Provision of Services

- (a) If this Agreement is for or includes the supply of Services, the

Supplier must:

- (i) provide the Services with the standard of professional skill, care, competence and diligence expected of a professional consultant experienced in providing the same or similar services within the timeframes and at the rates specified in the Order;
- (ii) comply with the requirements of all laws (including ordinances, regulations and by-laws) and authorities in any way relating to the site at which the Services are to be performed or the Services;
- (iii) where the Services are performed on a Council site, ensure that the Supplier is familiar with and complies with, and ensures its employees, agents and subcontractors comply with, Council's policies, rules and directions including those relating to work health and safety, security, traffic and parking, emergencies, discrimination and harassment and drug and alcohol testing; and
- (iv) to the extent relevant, comply with the requirements of the Building Code of Australia and all and any other relevant codes and standards, including Australian Standards.

4. Warranties

- (a) In addition to any warranties under the *Australian Consumer Law*, the *Fair Trading Act 1987*, the *Sales of Goods Act 1923* and other warranties implied by law:
- (i) Where Goods are to be supplied under this Agreement, the Supplier warrants to Council that:
 - it has the right to sell and transfer unencumbered title to the Goods;
 - the Goods will be new, free from defects and of merchantable quality (including complying with relevant Australian Standards) when delivered to Council;
 - the Goods will be fit for their intended purpose, or if no purpose is stated, the purpose for which the Goods would be ordinarily used;
 - the Goods will conform to the description, brand and/or model number if specified in the Order and match any demonstration model or sample if provided to or by Council;
 - the Goods do not, and Council's use of the Goods will not, infringe any third party right, including any patent, registered design, trademark or name, copyright or any other protected right, or any law, regulation, industry or Australian standard, or governmental direction, order or code; and
 - ensure that any warranty offered by a manufacturer of the Goods is enforceable by Council.
 - (ii) Where Services are to be supplied under this Agreement, the Supplier warrants that:
 - all information it has provided to Council as to its capacity, financial viability, insurance cover, experience and expertise is correct;
 - it either holds current or will obtain (at the Supplier's cost) all accreditations, permits, licences, consents, approvals, exemptions or authorities required by law or necessary to enable performance of this Agreement in accordance with the terms of this Agreement (**Approvals**) and, before starting work, submit evidence to Council or its representative regarding these Approvals;
 - it and all employees, agents and sub-contractors engaged by it in the performance of the Services has the skills, training and accreditations necessary to perform the Services to the level required by Council; and
 - the provision of the Services will not infringe any third party right, including any patent, registered design, trademark or name, copyright or any other protected right, or any law, regulation, industry or Australian standard, or governmental direction, order or code.

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- (b) In addition to any right under clause 2(f) of this Agreement, if the Supplier breaches any warranty under clause 4(a), Council may treat the breach by the Supplier as a repudiation of the Agreement giving rise to the remedies specified in clause 14.

5. Additional Supplier Obligations

- (a) The Supplier must as soon as practicable provide written notice to Council if delivery of the Goods (or part thereof) or performance of the Services is likely to be delayed, or of any defects or non-conformance of the Goods with the requirements under this Agreement.
- (b) The Supplier is responsible for all aspects of health and safety in the performance of the Services or the delivery of the Goods. The Supplier must in the performance of this Agreement:
- (i) comply with all work, health and safety laws;
 - (ii) identify and manage risks specific to the category of Goods and Services supplied under this Agreement and eliminate risks to health and safety so far as is reasonably practicable and if it is not reasonably practicable to eliminate risks to health and safety, then reduce those risks as far as is reasonably practicable.
- (c) The Supplier is responsible for, and acknowledges that Council may rely upon, the accuracy and completeness of all reports, data and other information provided to Council by the Supplier.
- (d) The Supplier must promptly repair any damage that it or its subcontractors or others under its control and direction cause to a Council site or any property owned by Council in the performance of this Agreement and must leave a Council site in a clean and tidy manner.
- (e) The Supplier must comply with Council's Code of Conduct.

6. Equipment

Any equipment provided or used by the Supplier in performing the Services must be maintained in a safe and proper working condition. Risk in and responsibility for the equipment remains with the Supplier at all times.

7. Intellectual Property

The Supplier grants to Council a royalty-free, irrevocable, perpetual and transferable licence, which may be sublicensed by Council in its sole discretion, to use any patent, registered design, trademark or name, copyright or any other protected intellectual property in any deliverable created under this Agreement, including designs drawings and reports, for the purpose for which the deliverables were supplied and if no purpose is specified, their usual purpose.

8. Payment and Invoicing

- (a) The total price payable by Council for the Goods and/or Services will be the total price shown on the Order inclusive of GST (**Price**) unless that Price is varied under clause 12 of this Agreement.
- (b) Unless separately identified on the Order, the Price includes all costs associated with delivery of the Goods.
- (c) Unless the parties otherwise agree, the Supplier shall submit a tax invoice upon delivery of the Goods or part thereof or completion of the Services or part thereof. The tax invoice must include all the details required by *A New Tax System (Goods and Services Tax) Act 1999* including without limitation the Supplier's Australian Business Number (ABN).
- (d) Council shall pay the Supplier within 30 days of receipt of a tax invoice in a form satisfactory to Council.
- (e) No payment by Council will be deemed to release the Supplier from its obligations under the Agreement.

9. Information and Confidentiality

- (a) The Supplier may not, without Council's prior consent, disclose any information in connection with the Goods, Services or this Agreement other than:
- (i) as necessary to effect performance under this Agreement,
 - (ii) any matter that is public knowledge, or

- (iii) as required under any law.

- (b) Council may disclose any information in connection with the Goods or Services as required or allowed by law, without prior notice to the Supplier.

10. Indemnities

- (a) The Supplier indemnifies Council in respect of all and any costs, claims, losses, damages and proceedings to which Council shall or may become liable including without limitation any loss, personal injury, death or damage to property caused or arising out of:
- (i) a breach of any warranty or other term of this Agreement;
 - (ii) any liability under the *Australian Consumer Law*, the *Sale of Goods Act 1993* (NSW) and *Fair Trading Act 1987* (NSW);
 - (iii) any defect or fault in the Goods;
 - (iv) any act or omission of the Supplier, its officers, employees, agents, or subcontractors in supplying the Goods or the Services;
 - (v) unsafe storage or transportation of any dangerous goods and any liability under any environmental or work, health and safety law including without limitation liability for clean up or remediation costs,

except if, and to the extent that, the claim arises because of Council's negligence, willful acts, fraud or breach of this Agreement.

- (b) Neither party is liable to the other for consequential or indirect loss or loss of profit arising out of or in connection with this Agreement.

11. Insurance

- (a) Prior to delivery of the Goods and/or supply of Services and whenever requested by Council, the Supplier must furnish Council or its representative with copies of the following insurance:
- (i) public liability insurance for \$20 million (unless a lesser sum is approved in writing by Council) in respect of any single occurrence;
 - (ii) professional indemnity insurance for \$10 million (unless a lesser sum is approved in writing by Council) in respect of any single occurrence;
 - (iii) workers compensation insurance and employee's liability insurance in accordance with applicable awards or legislation;
 - (iv) fully comprehensive motor vehicle insurance (if applicable);
 - (v) product liability insurance for the amount of \$20 million (unless a lesser sum is approved in writing by Council) in respect of any single occurrence; and
 - (vi) property insurance for \$1 million for one occurrence and \$5 million in the aggregate in respect to the Supplier's property including loss or destruction (at full replacement cost) of the Goods relating to this Agreement whilst retained in its possession, or while in transit.

- (b) The policies referred to in clause 11(a) must be taken out and maintained with a reputable and Australian Prudential Regulation Authority (APRA) approved insurance company. A failure to comply with this clause entitles Council to terminate this Agreement pursuant to the provisions of clause 13.

12. Variations

- (a) Council may at any time by giving 14 days' notice to the Supplier, vary the Order either by omission of or addition to the Goods or Services to be supplied under this Agreement. The Supplier must not perform a variation other than in accordance with a direction under this clause.
- (b) The parties must endeavour to agree to any reasonable adjustment to the Price or delivery timeframe having regard to any rates or prices included in the Order or current at the time of the variation. The Supplier may terminate this Agreement by written notice if it will be unable to provide the Goods/Services as specified in the variation notice or if adjustments to the Price or delivery timeframe cannot be agreed. If the Agreement is terminated under this clause, clause 13(b) and (c) will apply.

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- (c) The Supplier is not entitled to claim, and releases Council from any liability for, any loss, cost or expense (including, without limitation, loss of profits) attributable directly or indirectly to any reduction of the scope of this Agreement.

13. Termination for Convenience

- (a) This Agreement may be terminated at any time by mutual agreement or by Council at any time before delivery of all or part of the Goods/Services, by giving written notice to the Supplier.
- (b) If the Agreement is terminated under this clause, Council will pay for Goods/Services supplied in accordance with the Agreement up to the date of termination, and for the Supplier's reasonable and substantiated costs of materials and other items ordered in connection with the Goods/Services, provided the total of all payments to the Supplier under this clause does not exceed the Price. If applicable, title to and property in those materials and other items will pass to Council on payment.
- (c) The Supplier must mitigate all loss and expenses in connection with the cancellation, variation or termination of the Agreement.

14. Termination for cause

- (a) Either party may at any time terminate this Agreement if the other party does not rectify any non-compliance with its obligations under this Agreement within the deadline specified in a notice given by Council to rectify that non-compliance (which must be reasonable depending on the nature and extent of the non-compliance).
- (b) Council may terminate this Agreement if the Supplier:
- (i) is declared bankrupt or bankruptcy proceedings are commenced against it, is insolvent or becomes subject to any form of insolvency administration; or
 - (ii) is the subject of proceedings or investigations by ICAC, the police or similar public body; or
 - (iii) the Supplier breaches Council's Code of Conduct.
- (c) If the Agreement is terminated under this clause, Council is only liable to pay for Goods delivered or Services performed in accordance with this Agreement before the date on which notice of termination was given.
- (d) The Supplier is not entitled to claim, and releases Council from any liability for, any loss, cost or expense (including, without limitation, loss of profits) attributable directly or indirectly to Council's termination of this Agreement.
- (e) Neither party can terminate this Agreement under clause 14(a) if a dispute exists in respect of the obligation the subject of the alleged non-compliance. Where the alleged non-compliance is due to late payment of a tax invoice by Council, a notice under clause 14(a) can only be issued once the tax invoice has been outstanding for a period greater than 90 days.

15. Notices

Any notice to be given or served in relation to this Agreement must be in writing and delivered by hand or sent by prepaid post, facsimile or electronic mail to the relevant postal address (deemed to be received 2 Business Days after posting), facsimile number or email address (deemed received on confirmation of transmission) stated in the Order or last notified in writing to the other party.

16. Assignment and Subcontracting

- (a) The Supplier cannot assign, sub-licence, subcontract or transfer in whole or in part any of its rights or obligations under this Agreement, without Council's prior written consent which can be refused in its absolute discretion.
- (b) The written consent by Council under clause 16 (a), does not relieve the Supplier from its obligations or any liability under this Agreement. Any sub-contract must be on terms similar to this Agreement.

17. Waivers

Failure of a party to act or delay by a party in doing something the party is entitled to do under this Agreement does not amount to a waiver of any obligation or breach of an obligation by another party. A waiver is only effective if in writing, specifying the obligation or breach waivers and

signed and dated by the party giving the waiver.

18. Severability

If this Agreement or any part of it is or later becomes void, unenforceable or illegal or is otherwise capable of being read down, then it shall be severed or read down only to the extent necessary so that it is no longer void, unenforceable, illegal or capable of being read down and the remainder of this Agreement shall have full force and effect.

19. No Merger and Survival of Indemnities

- (a) Except as expressly provided in this Agreement:
- (i) an agreement, representation, warranty, release or indemnity given under this Agreement does not merge on completion and survives termination or expiry of it; and
 - (ii) each indemnity in this Agreement is a continuing and independent obligation of the party giving the indemnity and includes the indemnified party's reasonable legal costs on a full indemnity basis.
- (b) Any matter arising from clause 19(a)(i) or (ii) above are binding on the Supplier's assigns.

20. Non-Exclusivity

This Agreement is non-exclusive and nothing in it prevents Council from acquiring the same or similar Goods or Services from another person, or requires Council to purchase a minimum quantity of Goods or Services from the Supplier.

21. Relationship between the Parties

The Supplier performs its obligations under this Agreement as an independent contractor.

22. Disputes

A party may issue a notice of dispute if a dispute or difference arises under or in relation to this Agreement. If a dispute cannot be resolved by negotiations in good faith, the parties shall mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator. Each party will share the costs of the mediator. The Supplier must continue to perform obligations notwithstanding the existence of the dispute.

23. Governing Law

This Agreement shall be governed by the laws in force in New South Wales and the parties submit to the jurisdiction in that State.