

PURCHASE ORDER TERMS AND CONDITIONS FOR THE PROVISION OF GOODS

DEFINITIONS

Confidential Information means these Terms and Conditions and all information made available by Waikato Regional Council to the Supplier in relation to this Agreement.

Delivery Location means the location as stated in the Purchase Order, or any such other location as notified in writing by Waikato Regional Council to the Supplier.

Delivery Date means the date specified in the Purchase Order as the date on which the Goods must be delivered to the Delivery Location.

Goods means the goods specified in the Purchase Order.

Price means the price of the Goods agreed by Waikato Regional Council and the Supplier and specified in the Purchase Order. Unless otherwise agreed in writing, all Prices are inclusive of all costs of manufacture, delivery, packaging and transportation, insurance and all applicable taxes (excluding GST).

Purchase Order means the Purchase Order related to Terms and Conditions.

Interpretation: In the construction and interpretation of this Terms and Conditions, unless the context otherwise requires:

- a) the introduction, headings and marginal notes do not affect interpretation of the Agreement
- b) words importing one gender include other genders and a singular includes the plural and vice versa
- c) a reference to a clause or schedule is a reference to a clause or schedule of these Terms and Conditions
- d) a reference to a “month” means calendar month
- e) a statute includes that statute as amended from time to time and any regulations, other Orders in Council, and other instruments issued or made under that statute from time to time, as well as legislation passed in substitution for that statute
- f) references to “written” and “in writing” include any means of permanent visual representation
- g) a reference to one party notifying another or giving a notice to another, or agreeing, consenting, approving or objecting to any matter or nominating or making any nomination or giving any direction means that party doing so in writing.

1. CONTRACT TAKES PRECEDENCE

- If a formal written contract is in place for the supply of Goods the terms and conditions of that contract shall take precedence over these Terms and Conditions.

2. ORDERING OF GOODS

- The Purchase Order details the Goods that Waikato Regional Council wishes to purchase and specifies the Delivery Date and Delivery Location for those Goods.

3. DELIVERY OF THE GOODS

- The Goods must be delivered to the Delivery Location on the Delivery Date specified in the Purchase Order.
- If the Supplier is unable to deliver the Goods on the Delivery Date, Waikato Regional Council and the Supplier will use their best endeavours to reach an alternative, mutually acceptable alternative date of delivery for the Goods. However, Waikato Regional Council is under no obligation to accept the Goods except on the Delivery Date specified in the Purchase Order. If the Supplier fails to deliver the Goods on the Delivery Date or any later date agreed to by the Supplier and Waikato Regional Council, Waikato Regional Council may immediately terminate this Agreement.
- Waikato Regional Council will have 10 (ten) working days following the delivery of the Goods to inspect the condition of the Goods. Waikato Regional Council will notify the Supplier of the Goods if they do not match the description in the Purchase Order or which are otherwise faulty and those Goods will be removed by the Supplier and at the Supplier's cost, within 2 (two) working days of receiving the notification.

4. QUALITY

- The Supplier warrants that the Goods supplied to Waikato Regional Council pursuant to the terms of this Agreement will be of good and merchantable quality, fit for purpose and will comply with the specifications detailed in the Purchase Order or otherwise notified by Waikato Regional Council to the Supplier prior to the Delivery Date.
- The Supplier warrants that it has the legal and beneficial right to supply the Goods to Waikato Regional Council pursuant to this Agreement, and that the supply of the Goods will not breach the intellectual property or other rights of any third party.

5. INVOICING AND PAYMENT

- All Tax Invoices must be posted to:
 - Waikato Regional Council
 - Accounts Payable
 - Private Bag 3038
 - Waikato Mail Centre
 - Hamilton 3240
- All Tax Invoices must quote the Purchase Order Number.
- Waikato Regional Council's preferred method of payment is direct credit by electronic file transfer.
- Prior to accepting the Purchase Order the Supplier must provide to Waikato Regional Council the required bank account details and a deposit slip for direct payment to be enabled.
- The Supplier will invoice Waikato Regional Council within 5 (five) working days of delivery of the Goods in accordance with these Terms and Conditions
- If correct Tax Invoices are received by Waikato Regional Council by the 5th Working Day of the month, undisputed amounts due from Waikato Regional Council shall be paid to the Supplier by the 20th day of that month in respect of Services completed in the preceding month.
- If correct Tax Invoices are not received by Waikato Regional Council by the 5th Working Day of the month, or the Tax Invoices are disputed then payment will not be made until the following 20th of the month or the 20th of the month following resolution of the disputed payment.
- Invoices for partial delivery of the Goods will not be accepted (unless progress payments are agreed to by Waikato Regional Council prior to the Services commencing).
- Waikato Regional Council will not be liable for late penalty payments if payment is delayed for any reason.
- The Supplier warrants that the Price is no less favourable than the price paid by any other purchaser for the same Goods supplied by the Supplier in substantially similar circumstances.
- Subject to Waikato Regional Council's rights under clause 3.3 and clause 7, title and risk in the Goods (including, but not limited to, loss, theft, damage and deterioration) will pass to Waikato Regional Council upon Waikato Regional Council's payment for the Goods in accordance with this Agreement.
- The Supplier will insure the Goods during transportation and delivery for any damage or loss which occurs and will insure the Goods for the period up until title and risk in the Goods passes to Waikato Regional Council.
- The Supplier warrants that it is the legal and beneficial owner of the Goods and is able to, and will, pass free and clear title to Waikato Regional Council pursuant to clause 6.1.
- If the Goods are, in Waikato Regional Council's reasonable opinion faulty or damaged they will be returned to the Supplier at the Supplier's cost which, for the avoidance of doubt, includes freight costs and the Supplier at Waikato Regional Council's sole option will either:
 - a) replace the Goods within 2 (two) working days; or
 - b) refund all monies paid (if any) in respect of the Goods within ten (ten) working days of those Goods being returned.

6. WARRANTY

- Where the Goods are covered under a manufacturer's warranty or any other warranty the Supplier will ensure that Waikato Regional Council is entitled to and able to utilise the warranty when necessary in accordance with the warranty conditions.

7. SOFTWARE

- Where the Goods include Software (installed or otherwise), the Supplier warrants that upon the delivery of the Goods the Supplier will transfer any licences to the Software to Waikato Regional Council before the title and risk in the Goods pass to Waikato Regional Council and the Supplier indemnifies Waikato Regional Council for any claim, expense, loss, damage or cost (including legal costs incurred in defending any such claim on a full indemnity basis) arising from a breach of this warranty.

8. INTELLECTUAL PROPERTY

- The Supplier agrees that all Intellectual Property that arises or is created in the course of this Agreement will be the exclusive property of Waikato Regional Council. Any Intellectual Property owned by the Supplier outside of this Agreement is the property of the Supplier.
- The Supplier warrants that any Goods (including software) provided to Waikato Regional Council by the Supplier do not infringe the industrial or intellectual property rights of any person and the Supplier indemnifies Waikato Regional Council for any claim, expense, loss, damage or cost (including legal costs incurred in defending any such claim on a full indemnity basis) arising from a breach of this warranty.

9. APPLICABLE LAW AND INDUSTRY STANDARDS

- The Supplier warrants that:
 - a) it will comply with all applicable laws and regulations in performing its obligations to supply the Goods under this Agreement and, at its cost, hold and maintain all necessary licences, registrations, permits, authorisations, consents and approvals required by or from any regulatory agency; and
 - b) it shall manufacture, pack, store, supply and deliver the Goods in accordance with the standards imposed by all applicable industry standards.
- The Supplier indemnifies Waikato Regional Council for any claim, expense, loss, damage or cost (including legal costs incurred in defending any such claim on a full indemnity basis) arising from a breach of the warranties in clause 11.1.

10. CONFIDENTIALITY

- The Supplier must keep the Confidential Information strictly confidential at all times unless the Confidential Information becomes:
 - a) generally known to the public other than due to a breach of this clause; or
 - b) is legally required to be disclosed.
- The Supplier is responsible for ensuring that its officers, employees and consultants comply with the obligations of confidentiality imposed upon it by clause 12.1.

11. OCCUPATIONAL HEALTH AND SAFETY

- Where necessary, information relating to the Goods must be supplied to Waikato Regional Council by the Supplier to detail any health and safety requirements, including, but not limited to installation, handling or operating procedures, personal protective equipment to be used, emergency procedures and any required or recommended training that staff should undertake, which are required by any law or regulation.
- The Supplier shall adhere to all current (and any future) Waikato Regional Council Health and Safety policies. The Council shall notify the Supplier as soon as reasonably practical of any changes to Waikato Regional Council's Health and Safety policies. The Supplier will provide the Council with a copy of its Health and Safety policy (where applicable), together with any task specific health and safety documentation, as directed by the Council from time to time.

12. RELATIONSHIP OF PARTIES

- Nothing in this Agreement should be interpreted as constituting either party as an agent, partner or employee of the other and neither party may pledge the credit of the other nor represent to any third party that:
 - a) it is the other party; or
 - b) it is an agent, partner or employee of the other party; or
 - c) it has any power or authority to incur any obligation of any nature on behalf of the other party.
- For the avoidance of doubt, despite any trade custom which may be built up over time between the parties Waikato Regional Council has no ongoing obligation to purchase any Goods from the Supplier.

13. RESOLUTION OF DISPUTES

- The parties will use all reasonable endeavours to resolve any dispute between them.
- If after two weeks of negotiation a dispute remains unresolved then the matter will be put before a sole arbitrator agreed to by the parties. If the parties cannot agree then an arbitrator will be appointed by the then President of the New Zealand Law Society.
- The costs of the arbitration will be met equally by each party, or as determined by the arbitrator. Each party will meet its own costs with regard to the arbitration. The arbitration will be conducted in accordance with the Arbitration Act 1996.

14. NOTICES

- Notices must be in writing and sent to the recipient at the address or the facsimile below:

Waikato Regional Council
Private Bag 3038
Waikato Mail Centre
Hamilton 3240
Facsimile: (07) 859 0998

Supplier: The Supplier's address as stated in Schedule 1.

- Notices will be deemed received:
 - a) if posted, two days after posting;
 - b) if hand delivered, upon receipt by an employee; or
 - c) if sent by facsimile, upon confirmation of successful transmission of stock.

15. GENERAL

- **Amendments:** No amendment or waiver of any provision of these Terms and Conditions, nor any consent to any departure by any party from any such provision, shall in any event be of any effect unless it is in writing, signed by the parties or in the case of a waiver, by the party giving it.
- **Assignment:** Neither party may sell, transfer, assign or sub-contract all or any part of its interests or obligations under these terms and conditions without the other party's written consent.
- **Entire Agreement:** These Terms and Conditions, the Purchase Order and other documentation to which the Purchase Order relates, constitute the entire agreement between the parties.
- **Law:** This agreement between the Parties is governed by New Zealand law, New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.
- **Time:** Time will be of the essence for the performance of any of the Supplier's obligations under this agreement.
- The exercise by a party of an express right set out in this Agreement is without prejudice to any rights, powers or remedies available to that party in contract, at law or in equity including any rights, powers or remedies which would be available to that party if the express right was not set out in this Agreement.
- This Agreement can only be varied by written agreement between the parties with express reference to this clause.
- Each clause (or part thereof) is capable of severance from this Agreement without affecting the validity of any other clause or the Agreement as a whole.