

# PURCHASE ORDER TERMS AND CONDITIONS FOR THE PROVISION OF SERVICES

## DEFINITIONS

**Parties** means the Supplier and Waikato Regional Council.

**Purchase Order** means an order issued and authorised by Waikato Regional Council that normally contains the following information:

- a) a Purchase Order Number;
- b) a description of the Services required by Waikato Regional Council;
- c) the price of the Services;
- d) the commencement date and completion date of the Services;
- e) any particular specifications relating to the Services;
- f) any special instructions relating to delivery of the Services;
- g) the Supplier's name and contact telephone number;
- h) the Waikato Regional Council contact person name and telephone number; and
- i) any other specific information required by Waikato Regional Council's management systems.

**Price** means the price for the Services as stated on the Purchase Order.

**Purchase Order Number** means an identification number, unique to each Purchase Order, which is stated on the Purchase Order.

**Services** means work performed for Waikato Regional Council in consideration for money and as specified on a Purchase Order.

**Supplier** means an individual, organisation (incorporated or unincorporated) or company that supplies the Services.

**Tax Invoice** means an invoice provided by the Supplier to Waikato Regional Council pursuant to the Goods and Services Tax Act 1985.

**Terms and Conditions** mean these Waikato Regional Council Purchase Order Terms and Conditions for the Provision of Services.

**Work Brief** means the document that may accompany the Purchase Order which may contain additional information regarding the Services.

**Worker** has the meaning given to it under the Health and Safety at Work Act 2015 and applies to the Supplier and any employee or subcontractor of the Supplier.

**Working Day** means a day (other than a Saturday or a Sunday) on which registered banks are open for business in Hamilton, New Zealand.

**Workplace** has the meaning given to it under the Health and Safety at Work Act 2015, and includes any place where work is being carried out and any place where a Worker goes, or is likely to be, while providing the Services.

**Interpretation:** In the construction and interpretation of these 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; and
- f) references to "written" and "in writing" include any means of permanent visual representation.

## 1. CONTRACT FOR SERVICES TAKES PRECEDENCE

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

## 2. ACCEPTANCE OF ORDER

- All orders for Services must be made using a Purchase Order.
- A Purchase Order is an offer by Waikato Regional Council to purchase the Services. The offer is deemed to be accepted upon the Supplier agreeing or commencing to supply the Services to which the Purchase Order relates.
- These Terms and Conditions are deemed to be accepted upon the Supplier agreeing or commencing to supply the Services to which the Purchase Order relates.

## 3. WITHDRAWAL AND EXPIRY OF PURCHASE ORDER

- Waikato Regional Council can withdraw the Purchase Order at any time prior to the Supplier agreeing or commencing to supply the Services to which the Purchase Order relates.
- A Purchase Order will expire 21 days following its issue unless accepted by the Supplier.
- The Price is exclusive of GST and any duty, but is otherwise all inclusive of any other charges or taxes.
- Any variation to the Price must be notified prior to acceptance of the Purchase Order by the Supplier.
- If no price is stated on the Purchase Order the Supplier must advise Waikato Regional Council as soon as a price can be confirmed.

## 5. STANDARDS AND RESOURCES

- The Supplier will exercise due skill and care in providing the Services to Waikato Regional Council in accordance with any specifications and requirements, which Waikato Regional Council advises and to accepted industry standard.
- The Supplier will provide the Services using its own resources unless otherwise agreed by Waikato Regional Council.

## 6. 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 Services 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 20th of the following month or the 20th of the month following resolution of the disputed payment.

- Invoices for partial completion of the Services will not be accepted (unless progress payments are agreed to by Waikato Regional Council prior to the Services commencing).
- Waikato Regional Council shall deduct withholding tax where required by law.
- 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 Services supplied by the Supplier in substantially similar circumstances.

## 7. STATUS OF THE SUPPLIER

- The Supplier is and shall remain at all times an independent Supplier and is not the servant, employee or partner of Waikato Regional Council.

## 8. LIABILITY

- Where the Supplier breaches these Terms and Conditions, the Supplier is liable to Waikato Regional Council for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Supplier shall not be liable to Waikato Regional Council for Waikato Regional Council's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort, or otherwise.
- The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities or expenses shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$NZ250,000.
- Neither Party shall be liable for any loss or damage occurring after a period of six years from the date on which the Services were completed.
- The Supplier is solely responsible for payments of all taxes, duties or levies which may be payable by the Supplier on the Price or any other payments made by Waikato Regional Council and Waikato Regional Council shall make no deductions on account of tax or any other imposition except where Waikato Regional Council is required by law to do so.

## 9. INSURANCES

- The Supplier shall effect and maintain appropriate insurances in respect of the Services including Public Liability Insurance Cover and Professional Indemnity Insurance Cover (where appropriate) for the amount of liability under clause 8.2 and any other further insurance as described in the Purchase Order, Work Brief or other documentation to which the Purchase Order relates. The Professional Indemnity Insurance shall be held for a period of 6 years from completion of the Services.

## 10. LEGAL COMPLIANCE

- The Supplier shall comply with all legislation, regulations, standards and any industry codes of practice during the performance of the Services.

## 11. NEGLECTED PROPERTY

- If the Supplier's property is not removed from any relevant Waikato Regional Council property or job site when required by Waikato Regional Council, it may be disposed of by Waikato Regional Council at the Supplier's risk and cost.

## 12. INTELLECTUAL PROPERTY

- Any intellectual property created by the Supplier during the performance of the Services is the exclusive property of Waikato Regional Council.
- The Supplier shall be liable to Waikato Regional Council for all losses, damages, costs, actions, proceedings, claims and demands which Waikato Regional Council may incur or be subject to from a third party to the extent caused by any infringement by the Supplier of any intellectual property rights of that third party.

## 13. CONFIDENTIALITY

- The Supplier will maintain and aid in maintaining confidentiality of all Waikato Regional Council information which comes into the Supplier's possession or knowledge as a result of performing the Services.
- The Supplier acknowledges that as Waikato Regional Council is a local authority it is subject to the provisions of the Local Government Official Information and Meetings Act 1987 and therefore may be required to disclose information relating to the Services including the Purchase Order, Work Brief and other documentation to which the Purchase Order relates.

## 14. HEALTH AND SAFETY

- The Health and Safety at Work Act (“the Act”) places obligations on all those in the Workplace to ensure safe work. The Act alters New Zealand’s health and safety framework regarding the management of health and safety obligations for contractors/ Suppliers. The Act also sets out increased penalties for those who do not comply with these health and safety obligations. The Parties are responsible for meeting their respective health and safety obligations at law and must as far as reasonably practicable consult, co-operate and co-ordinate activities with each other and any subcontractors or other parties. The Parties shall comply with their Worker engagement, participation and representation obligations.
- The health and safety of Workers and the Workplace is important to Waikato Regional Council and it is therefore monitored regularly by Waikato Regional Council. Prior to the commencement of the Services, Waikato Regional Council shall undertake a risk assessment to identify any hazardous work associated with carrying out the Services. Where the Council identifies any hazardous work associated with the Services, the Council shall notify the Supplier of the scope of any hazardous work, (where known) any special regulatory or industry risk management measures required to mitigate, manage or otherwise deal with such hazardous work, and any special additional measures for the safe management of the hazardous work required by Waikato Regional Council.
- If during the performance of the Services either Party identifies any unforeseen hazard or risk associated with the Services then that Party shall notify the other Party as soon as practicable so that appropriate safety measures can be put in place.
- The Supplier (including all Workers) shall adhere to all current (and any future) Waikato Regional Council Health and Safety policies. The Waikato Regional 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 Waikato Regional 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 Waikato Regional Council from time to time.
- The Supplier shall at all times comply with its own Health and Safety Policy and all applicable health and safety requirements as set out in the Act. In providing the Services the Supplier shall so far as is reasonably practicable:
  - a) ensure that no act or omission by the Supplier or the Supplier’s Workers causes a risk to any person on, in or about the site where the Supplier is carrying out the Services;
  - b) provide and maintain a safe working environment;
  - c) identify and manage any health and safety risks under the Supplier’s control;
  - d) ensure that any Worker involved in carrying out the Services is not unnecessarily put at risk in carrying out the Services;
  - e) have proper procedures in place for dealing with emergencies that may arise including having emergency plans in place (and ensuring that these are known to Waikato Regional Council) and maintaining a register of accidents and serious harm;
  - f) investigate accidents and identify their cause and report to Waikato Regional Council as to the outcomes;
  - g) ensure that all Workers under the Supplier’s control are appropriately supervised and trained to manage their own health and safety whilst in the Workplace;
  - h) report all notifiable work which the Supplier is undertaking to the appropriate enforcement agency with a copy of the report being provided to Waikato Regional Council;
  - i) ensure the use of all necessary safety equipment and if additional equipment or protective clothing is required, the Supplier will bring this to the attention of Waikato Regional Council before commencing the Services;
  - j) ensure that all equipment used by the Supplier to carry out the Services is maintained in good condition and in good working order. (The Supplier is not to use any equipment or plant owned by Waikato Regional Council unless expressly authorised by Waikato Regional Council);
  - k) notify Waikato Regional Council immediately of anything which the Supplier believes is a risk to health and safety or any event which gives or may give rise to the Supplier or Waikato Regional Council being in breach of any duties under the Act;
  - l) maintain the Workplace for which the Supplier has responsibility in an orderly state and in such a condition as to avoid health and safety risks to persons and property;
  - m) provide Waikato Regional Council with a copy of its task specific health and safety documentation, if requested; and
  - n) ensure that any Workers involved in carrying out the Services abide by these health and safety requirements.
- The Parties shall meet:
  - a) to review health and safety matters (as appropriate having regard to the size and scope of the Services); and
  - b) post completion of the Services (where appropriate in the circumstances) to undertake a post-contract review of compliance by the Parties of their respective health and safety obligations.

- In the event that the Supplier becomes aware of any unforeseen safety risk that is likely to affect the Supplier's ability to provide the Services, then the Supplier shall notify Waikato Regional Council as soon as reasonably practicable and the Parties shall consult in good faith to agree an extension of time, variation of Services and/or variation to the Fee payable accordingly.
- Waikato Regional Council has the right to audit the Services for health and safety compliance at any time during the performance of the Services. Waikato Regional Council is under no obligation to advise the Supplier that such an audit is to take place.

## 15. SUSPENSION AND TERMINATION OF THE SERVICES

- Waikato Regional Council may suspend all or part of the Services where the Supplier has, or may have, breached any of its obligations under these Terms and Conditions including but not limited to health and safety provisions under clause 14. In such circumstances the Supplier shall immediately make arrangements to stop the Services and cease further expenditure.
- Notwithstanding any clause in this Agreement to the contrary, Waikato Regional Council may terminate this Agreement:
  - a) immediately by notice in writing to the Supplier at any time if, in the reasonable opinion of Waikato Regional Council, the Supplier commits a material breach to this Agreement; or
  - b) on 30 days' notice in writing to the Supplier at any time.
- Termination or suspension of the Purchase Order and these Terms and Conditions is without prejudice to the rights and obligations of the Parties' accrued up to and including the date of termination or suspension. This includes payment by the Council for the Services undertaken by the Supplier up to and including the date of termination or suspension unless termination is a result of the default of the Supplier.

## 16. DISPUTE RESOLUTION

- The Parties shall attempt in good faith to settle any dispute by negotiation. If negotiation is unsuccessful then mediation shall be used. Failing agreement on a mediator, one shall be appointed by the President of the New Zealand Law Society.

## 17. GENERAL PROVISIONS

- **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 including the Work Brief, 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.
- **Severability:** In the event that any part or provision of these Terms and Conditions and/or any Work Brief issued pursuant to these Terms and Conditions is held to be invalid, illegal or unenforceable for any reasons, any such part or provision shall be deemed to be deleted from these Terms and Conditions and/or Work Brief. The illegality, invalidity, or non-enforceability of such part or provision will ultimately be determined in a Court of Law.
- **Survivorship:** Termination or expiration of these Terms and Conditions will not affect the rights and obligations of the Parties as are intended to survive the termination or expiration.
- **Time:** Time will be of the essence for the performance of any of the Supplier's obligations under this agreement.
- **Waiver:** A failure, delay or indulgence by any Party in exercising any power or rights will not operate as a waiver of that power or right.