

General Purchase Order Conditions

1. General

1.1 The terms of this General Purchase Agreement (Agreement) will apply to all purchase orders (Orders) for goods and/or services (goods/services) placed by Inner West Council (Council) to a supplier (Supplier) and are in addition to any terms and/or conditions specified in an individual Order.

1.2 Where an Order is issued, the terms in this Agreement will be in addition to the terms of a contract between Council and the Supplier (Supplier Contract) or the terms of a Preferred Supplier Arrangement (Supplier Arrangement). In the event of any inconsistency between an Order and a contract, the Supplier Contract or the Supplier Arrangement will take precedence and prevail to the extent of the inconsistency. Unless Council has agreed in writing, no other terms, conditions or any variations apply to an Order by Council.

2. The Agreement

2.1 Supply of goods/services pursuant to an Order will constitute acceptance of the terms of this Agreement.

2.2 This Agreement and any of its obligations or benefit or any right under this Agreement may not be transferred or subcontracted out by the Supplier without prior written consent of Council. If written approval is granted to the Supplier to transfer or subcontract out, the Supplier will not be relieved from any of the obligations under this Agreement or will not impose any liability on the Council to an assignee or a subcontractor.

2.3 The laws of New South Wales govern this Agreement. The Supplier must identify all applicable legislation to the supply of goods/services and comply with the requirements of all such legislation including Work Health and Safety legislation.

3. Waiver

3.1 A waiver of a breach of a term of this Agreement is not to be taken to be a waiver in respect of any other breach. The failure of either party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

4. Price

4.1 All prices quoted in an Order are fixed subject to any other special conditions and inclusive of all taxes, including GST, insurance, marking, handling, freight and delivery costs, any other applicable costs and charges including costs associated with the return of goods wrongly supplied or goods that are defective.

5. Warranties

5.1 The Supplier warrants that at the time ownership of goods/services supplied under this Agreement passes to Council, they will be free from any charge or liability, comply with all applicable Standards and legislation, are free from defects in material and workmanship and conform to the description and quality of the goods/services specified in the Order.

5.2 In relation to goods procured from third parties, the Supplier assigns to Council the benefits of any warranties given by the third parties in addition to warranties offered by the Supplier under this Agreement.

5.3 In relation to services supplied under this Agreement, the Supplier warrants that the services do not infringe the intellectual property rights of any third party or any patent, trademark, copyright or registered design and all personnel engaged to supply the services including the Supplier are appropriately qualified, competent and experienced; hold all necessary licences, permits and authorities.

6. Delivery, Ownership, Acceptance and Risk

6.1 Title of the goods/services vests in Council upon acceptance. Until Council accepts them, all risk of any loss or damage associated with the goods/services will remain with the Supplier. The goods/services must be supplied on the date, time and place specified by Council.

6.2 The Supplier must ensure all invoices, packing slips and all other documents contain the Order number, description, quantity of the goods and the name of the Council representative. The goods must be packed for safe delivery. Acceptance of goods/services by Council is subject to satisfactory inspection on delivery. Council will not accept or pay for goods/services unless the Order number is included in the documents issued by the Supplier.

6.3 Goods/services that do not comply in every respect with the Order: the description, specification and/or any samples submitted, will not be accepted. In relation to any goods not accepted by Council, all costs associated with collecting the defective goods, storing, handling and returning will be at the Supplier's expense or, the Supplier must refund to Council any amount paid for the defective goods/services.

7. Defective Goods

7.1 When notified by Council, the Supplier at its own cost must remedy any defect in the supplied goods/services within 30 days of being notified. If the Supplier fails to do so, Council may arrange for remedial work by third party or return the goods to the supplier at the Supplier's expense and Council will be entitled to a full refund of the price of goods/services. These rights and remedies are in addition to and, do not limit, any other the rights of Council at law.

8. Payment

8.1 If the Supplier has supplied the goods/services in accordance with the Order, Council has accepted the goods/services and the Supplier has issued a valid tax invoice substantiated by an itemised account and any further details reasonably requested by Council, payment will be made within 30 days from the date a correctly rendered invoice or statement is received, when a Supplier Contract or a Supplier Arrangement does not provide

for the time of payment.

8.2 All complaints regarding late payments by Council may be addressed to apinvoice@innerwest.nsw.gov.au

8.3 The Supplier acknowledges that registration with Council's payment authentication service provider, EFTsureTM, is a pre-requisite to receipt of any payment from Council. It is the Supplier's responsibility to ensure that it has validly registered, such registration being free, but which must be completed in the manner required by EFTsureTM at www.eftsure.com.au

9. Insurances

9.1 The Supplier must hold and provide evidence when requested by Council of all appropriate insurance (where applicable, public liability, product liability, workers' compensation, professional indemnity insurance) to cover the risks associated with goods/services supplied.

9.2 The supplier must take out and maintain all applicable insurances for at least \$20 million covering the Council and the Supplier against all claims of loss or injury arising from the delivery of the goods or the performance of services by the Supplier, its subcontractors, employees or agents.

10. Indemnity

10.1 The Supplier will indemnify Council, its employees, agents and the State of NSW against any claim, loss or expenses (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor-client basis) arising out of any unlawful, negligent, reckless or deliberately wrongful act or omission of the Supplier in the performance of or by breach of this Agreement.

11. Termination

Council may terminate this Agreement:

11.1 If the Supplier becomes bankrupt, insolvent or commits a substantial breach that is capable of remedy and does not remedy within 7 days of giving written notice to the Supplier by Council; or

11.2 Without cause, by giving written notice to the Supplier. Having being notified, the Supplier must stop supplying goods/services and take necessary steps to mitigate losses. In respect of termination of this Agreement under this clause, Council will reimburse the Supplier its unavoidable direct costs incurred as a result, provided the claim is supported by written evidence to the total satisfaction of the liability of Council to the Supplier.

11.3 Under any circumstances, Council will not be liable for any consequential loss or loss of profits suffered by the Supplier as a result of the termination of this Agreement.

11.4 Upon termination of this Agreement, Council will be under no obligation to pay for any goods/services which are wholly or partly manufactured or yet to be delivered that is still in possession of the Supplier as at the time of termination.

11.5 Force Majeure: the obligations of the Supplier and Council will be suspended during the time and to the extent that the Council and the Supplier are prevented from or delayed in complying with its obligations by the Force Majeure. If after a reasonable period of time (determined by the Council and the Supplier), the Force Majeure event

makes it impossible for the Council and the Supplier to perform its obligations under this Agreement, either party may at its election terminate this Agreement.

12. Risk Management, Work Health & Safety and Environmental Consideration

12.1 The Supplier must comply with all relevant legislation and obligations with regard to Work Health & Safety and protection of the environment to ensure health and safety of its employees, subcontractors or other personnel and the environment.

12.2 Council is committed to local environmental controls and safeguarding the built and natural environment. The Supplier is required to maintain adequate controls in accordance with the statutory requirements and comply with the obligations to ensure protection of the environment.

13. Other Requirements

13.1 Delivery Dockets: must include quantity, description and name of material, Purchase Order Number, Delivery Docket Number and date.

13.2 Invoices: must include Council as the customer, Purchase Order Number, Council's ABN, the Supplier ABN, the GST inclusive Price and the date of the Tax Invoice.

13.3 Deliveries of Bags: each bag to be marked with name of material/contents, name of Supplier and net weight per bag in kilos.

13.4 Deliveries of Drums: side of each drum to be marked with name of material/contents, name of Supplier, drum deposit, and value if applicable. The side or top of drum to be marked with the net weight or net volume and, if possible tare and gross weight of the drum in kilos.

13.5 Pallets: pallet weight not to exceed 1,200kg per pallet

13.6 Hazardous Materials: must be clearly identified. If insufficient warning is shown, goods may be rejected. All hazardous materials are to be supplied with Material Safety Data Sheets.

13.7 Safety: all goods supplied must comply with the relevant Australian Standards and have approvals and licences where applicable. All chemical products must be supplied with safety instructions and Material Safety Data Sheets.

14. Definitions

14.1 Agreement means the Purchase Order Terms and Conditions

14.2 Council means Inner West Council

14.3 Order means the Purchase Order

14.4 Purchase Order Number means the Document Number shown on the Order

14.5 Force Majeure means a circumstance beyond the reasonable control of the Council or the Supplier which occurs without the fault or the negligence of the Council and the Supplier.

Conditions updated 2nd March 2018 (Procurement)