

PURCHASE ORDER TERMS AND CONDITIONS OF SUPPLY

NOTES:

- These standard terms and conditions do not apply to the purchase and supply of goods and/or services which is pursuant to a specific written contract.
- These standard terms and conditions will apply to the purchase and supply of goods and/or services by way of a **Purchase Order only**, and override any supplier standard terms and conditions.
- These Notes are for assistance only and do not form part of the terms and conditions.

1. DEFINITIONS

1.1. The following capitalised terms used in this Agreement have the following meanings:

Agreement means these terms and conditions which apply to each Purchase Order.

Delivery - for Goods, is the delivery of the Goods in good order and condition to WDC's premises or the location specified in the Purchase Order, - **for Services**, it is the provision of the Services to WDC's satisfaction at WDC's premises or the location specified in the Purchase Order.

Goods means all goods identified in the Purchase Order and all component parts of those goods to be provided by the Supplier to WDC.

GST means the goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing at the time of supply.

Purchase Order means the Purchase Order submitted by WDC to the Supplier to Deliver Goods and/or Services.

Purchase Order Number means the number set out in the relevant Purchase Order.

Services means all the services provided by the Supplier to WDC specified in the Purchase Order.

Site means the location/area made available to the Supplier for the purposes of carrying out the Delivery and installation of Goods and/or Services.

Supplier means the person Delivering/supplying the Goods and/or performing the Services as specified in the Purchase Order.

WDC means Waitomo District Council.

Working Days means any day other than a Saturday, Sunday or a public holiday in the Waikato.

2. AGREEMENT

2.1. All Purchase Orders placed by WDC are subject to the following terms and conditions. Where WDC and the Supplier have signed a written contract, the terms and conditions of that contract take precedence.

2.2. The terms and conditions of this Agreement prevail over the terms contained in the Supplier's standard conditions of sale, invoices, packing slips, delivery dockets or any other communication.

3. PURCHASE ORDER

3.1. WDC will confirm all orders for Goods and/ or Services by issuing Purchase Orders and a Purchase Order Number. WDC will not be liable for any Goods and/or Services supplied unless ordered on WDC's Purchase Order.

4. ACCEPTING AN ORDER

4.1. By accepting a Purchase Order from WDC, the Supplier agrees that the Goods and/or Services will be provided under the terms of this Agreement.

4.2. If a Supplier wants to negotiate different terms, it must do so before the Goods and/or Services are provided. Other terms will not apply unless expressly agreed by WDC in writing.

4.3. A notification to WDC that a Supplier accepts a Purchase Order subject to additional or amended terms is not valid unless agreed in writing by WDC.

4.4. WDC will not be bound by additional or amended terms unless it has agreed to them in writing, and may accept a supply of Goods and/or Services without being bound by any additional or amended terms it has been notified of but not agreed to in writing.

5. DELIVERY OF GOODS

5.1. In relation to the Delivery of Goods, the Supplier must (at its cost):

(a) adequately pack and protect the Goods against damage and

deterioration during Delivery;

(b) deliver the Goods to the delivery address provided by WDC;

(c) provide detailed advice notes and packing slips with the Goods;

(d) provide applicable documentation such as datasheets or certificate of conformance/analysis; and

(e) otherwise satisfy WDC's delivery requirements as set out in the Purchase Order or otherwise advised by WDC.

5.2. A delivery note must accompany all deliveries, and must include:

(a) WDC's Purchase Order number;

(b) Supplier's legal name and contact details; and

(c) Full description of Goods and/or Services and quantity delivered.

5.3. Quantities delivered must conform to the quantities ordered by WDC. WDC will only accept part deliveries and interim invoices if agreed in writing by WDC prior to delivery.

5.4. The signing of any delivery receipt or similar document by a WDC representative does not indicate WDC's acceptance of the Goods.

5.5. If, following inspection of any delivered Goods, WDC considers that the Goods, or the Delivery of the Goods, breaches this Agreement, then WDC may (without limiting any other right or remedy):

(a) require that the Supplier repair or replace the Goods, in which case the Supplier must immediately do so, at its cost; or

(b) reject the Goods, in which case clause 5.7 will apply.

5.6. If WDC is not satisfied with the Supplier's progress within a reasonable time in repairing or replacing any Goods WDC may:

(a) reject the Goods, in which case clause 5.7 will apply; or

(b) arrange for the Goods to be repaired by someone else, in which case the Supplier will reimburse all costs and expenses incurred by WDC in doing so.

5.7. If WDC rejects any Goods in accordance with this Agreement the Supplier must:

(a) remove the rejected Goods from WDC's premises at its own risk and expense. If the Supplier does not remove the rejected Goods within 15 Working Days, WDC may return the Goods and recover from the Supplier any cost and expense incurred; and

(b) provide a full refund of any amount paid (or credit for any amount payable) for the rejected Goods.

5.8. If WDC wishes to test or inspect any Goods before accepting delivery, the Supplier will provide any assistance with that testing or inspection which is reasonably requested by WDC. Goods will be subject to subsequent inspection and use of the Goods. Acceptance testing does not negate WDC's rights to recover from the Supplier or reject the Goods for any inadequacy in the Goods supplied.

6. TITLE AND RISK

6.1. Unencumbered title in Goods will pass to WDC upon delivery of the Goods to WDC.

6.2. Risk and ownership in Goods will pass to WDC upon delivery, this does not prejudice WDC's rights of redress at law if the Goods are damaged, inadequate or do not match the quantity and/or quality set out in the Purchase Order.

7. DELIVERY OF SERVICES

7.1. The Supplier must ensure all Services performed by the Supplier:

- (a) will be carried out in accordance with the requirements set out in the Purchase Order or as specified by WDC, and with all reasonable care, skill and diligence;
- (b) will be carried out at the time specified in the relevant Purchase Order, or if no time is specified, will be carried out promptly;
- (c) will be carried out by an appropriate number of people with an appropriate level of experience, qualification and supervision; and
- (d) will be carried out in accordance with all applicable legislative and regulatory requirements, and all applicable industry codes of conduct.

7.2. If the Supplier breaches this Agreement in relation to the Delivery of any Service then WDC may (without limiting any other right or remedy):

- (a) require the Supplier to perform the Services again to the required standard at the Supplier's expense; or
- (b) have the Services re-supplied by another person and recover the cost of doing so from the Supplier.

8. APPROVALS AND CONSENTS

8.1 Other than as set out in the applicable Purchase Order the Supplier must obtain every necessary and prudent authorisation, approval and consent required to ensure that WDC can at all times enjoy the full benefits of the Goods and/or Services.

9. PRICE

9.1. The prices stated on WDC's Purchase Order are fixed, unless there is prior written approval from both parties.

9.2. The price includes the Goods and/or Services, freight, insurance, packaging, crating, local cartage, customs duty and/or any other cost involved in the delivery of the Goods and/or Services.

9.3. The Supplier is not entitled to claim expenses, surcharges, margins or disbursements except if otherwise agreed in advance and in writing by WDC.

9.4. The price is exclusive of GST.

10. PAYMENT

10.1. WDC will pay for the Goods and/or Services in NZ dollars on the 20th of the month following the month of receipt of invoice.

10.2. All payments are subject to WDC receiving a GST tax invoice complying with clause 11.1 of this Agreement.

10.3. Failure by WDC to dispute any invoice prior to payment will not prejudice WDC's rights to subsequently dispute the correctness of that invoice.

10.4. WDC may withhold or deduct or set off the amount of any overpayment or any amount recoverable by WDC from the Supplier under this Agreement from any future payment.

11. INVOICES

11.1. Each GST tax invoice must meet all legal requirements and must state the following information:

- (a) include the words 'tax invoice'
- (b) WDC legal name and address
- (c) WDC Contact (issuer of Purchase Order)
- (d) WDC's Purchase Order number
- (e) Supplier's legal name
- (f) Supplier GST number
- (g) Supplier's invoice number
- (h) Date tax invoice issued
- (i) Description of Goods and/or Services, including quantity delivered
- (j) NZ dollar amount to be paid plus GST (if any).

11.2. Invoices must be submitted to WDC within ten (10) days of delivery and sent to:

Waitomo District Council,
PO Box 404,
Te Kuiti 3941

or emailed to accountspayable@waitomo.govt.nz.

11.3 Any invoices that do not quote the Purchase Order number or include the details stated in clause 11.1, will be returned to the Supplier to correct and re-issue.

12. ACCESS TO WDC SITES

12.1. If access to any WDC Site is necessary for the Delivery of the Goods and/or Services, WDC will allow the Supplier access at reasonable times, as necessary.

12.2. The Supplier will comply with WDC's security, operational, health and safety and Site requirements where the Supplier has access to any WDC Site.

12.3. When required by WDC, the Supplier must complete a WDC Site specific induction programme before Delivering the Goods and/or Services to WDC in accordance with this Agreement.

13. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

13.1. The Supplier represents and warrants that all Goods supplied by the Supplier:

- (a) are new and unused (unless otherwise agreed by WDC);
- (b) are of merchantable quality, and free of any defects in materials and workmanship;
- (c) are fit for any purpose which they could reasonably be expected to be used for, including any purpose which WDC told the Supplier it intended to use them for at or prior to the time it delivered the Purchase Order;
- (d) comply with any requirements and specifications supplied by WDC or agreed between WDC and the Supplier;
- (e) comply with all applicable legislation, regulation and industry codes of practice;
- (f) match any descriptions of them published by or on behalf of the manufacturer or the Supplier; and
- (g) are able to be lawfully sold by the Supplier to WDC and that WDC will, on delivery, receive good title to them, free from any security interest, lien or other encumbrance.

13.2. The Supplier will pass on to WDC the benefit of any warranty or guarantee received in respect of Goods supplied and will provide reasonable assistance to WDC to enforce such warranty or guarantee.

14. INDEMNITY

14.1. The Supplier must indemnify WDC in respect of any loss, damage or expense suffered or incurred by WDC (including legal fees) as a direct or indirect consequence of:

- (a) any act, error or omission by the Supplier and for which the Supplier is legally liable; or
- (b) any breach by the Supplier of any warranty or other obligation in this Agreement.

14.2. The indemnity shall survive the termination of this Agreement.

15. INSURANCE

15.1. The Supplier must maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Supplier, including, where applicable, professional indemnity insurance and insurance against public liability and property damage.

15.2. WDC may, acting reasonably on request, agree in writing to the requirements of this clause 15 being modified to take account of the nature of the Supplier's engagement.

16. DEFAULT AND TERMINATION

16.1. Without limiting any other rights or remedies which WDC has, WDC may, by notice in writing, terminate (or suspend the Supplier's performance of) this Agreement with immediate effect if the Supplier:

- (a) materially breaches the terms of this Agreement and does not remedy that breach within 10 Working Days of being notified of the breach by WDC;
- (b) goes into liquidation, has a receiver, administrator or statutory manager appointed in respect of itself or its assets, becomes unable to pay its debts as they fall due, is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts, is removed from the New Zealand Companies Register;
- (c) breaches any of the Suppliers health and safety obligations;
- (d) fails to deliver the Goods within 10 Working Days of the delivery date or agreed timeframe;
- (e) delivers Goods and/or provides Services where a material portion of those Goods and/or Services are defective; or
- (f) engages in any activity, conduct or otherwise that may adversely affect the reputation of WDC.

16.2. If the Supplier breaches any term of the Agreement, WDC may withhold payment of any amounts due under this Agreement in respect of the Goods and/or Services until the relevant breach has been remedied. If the breach is not able to be remedied, WDC may permanently withhold an amount equal to the loss which it reasonably calculates it has suffered as a result of the breach.

16.3. If WDC disputes any part of an invoice submitted by the Supplier, WDC will pay the undisputed amount but may withhold payment of the disputed amount without penalty until the dispute is resolved.

16.4 Termination of the Agreement or cancellation of the Purchase Order does not affect any responsibilities which are intended to continue or come into effect after the Agreement terminates.

17. HEALTH & SAFETY AND ENVIRONMENT

17.1. The Supplier must, in the Delivery and/or installation of Goods and/or Services:

- (a) ensure its employees, contractors and agents are competent in health, safety and environmental matters and that they at all times identify and exercise all necessary precautions for the health and safety of all persons and the protection of the environment;
- (b) comply with all applicable New Zealand legislation including (without limitation) the Resource Management Act 1991 and the Health and Safety in Work Act 2015, associated regulations and all codes;
- (c) comply with all WDC health and safety policies, procedures and requirements as notified by WDC;
- (d) if undertaking physical works in connection with the Delivery and/or installation of the Goods and/or Services, provide:
 - (i) evidence that it holds a valid SHE Prequalification, prior to the raising of any Purchase Order; and
 - (ii) where applicable, a contract task/site specific health and safety plan to WDC prior to commencing the Delivery and/or installation of the Goods and/or Services;
- (e) perform appropriate health, safety and environmental risk assessments and implement any necessary preventative controls prior to Delivery of the Goods and/or Services; and
- (f) immediately report to WDC all incidents involving injury or potential injury to any person or the environment or damage to property.

18. INTELLECTUAL PROPERTY

18.1. All Intellectual Property Rights owned by a party prior to, or independent of, a Purchase Order will remain owned by that party.

18.2. All Intellectual Property Rights created in the course of supplying the Goods and/or Services will be owned by WDC. The Supplier must execute all documents and take all other actions reasonably required by WDC to give effect to this clause 18.2.

18.3. The Supplier must ensure that the Goods and/or Services do not breach the intellectual property rights of any third party.

19. CONFIDENTIALITY

19.1. The Supplier will not use WDC's name to advertise or promote itself or its business in any way without the prior written consent of WDC.

19.2. Any information provided by WDC to the Supplier which is marked as confidential, must not be disclosed to any third party by the Supplier without the prior written consent of WDC or used by the Supplier other than for the purpose of satisfying the Supplier's obligations under the Purchase Order. This obligation survives termination or expiration of the Purchase Order.

19.3. WDC is subject to the provisions of the Local Government Official Information and Meetings Act 1987 and may be required to disclose information relating to the Services including the Purchase Order and other documentation to which the Purchase Order relates.

20. GENERAL

20.1. Neither party will be liable to the other for any delays nor non-performance of contractual obligations under this Agreement caused by a Force Majeure, provided each party has taken reasonable steps to minimise any loss, damage or delay resulting from a Force Majeure event. A Force Majeure event includes fire, outbreaks of war, acts of hostility and acts of God.

20.2. The Supplier warrants that as at the date of the Purchase Order, it has no conflict of interest in providing the Goods and/or Services. The Supplier must immediately notify WDC in writing if any conflict of interest arises in relation to the Delivery of the Goods and/or Services.

20.3. The Supplier must not assign or subcontract any of its rights or obligations under these terms and conditions without WDC's prior written consent.

20.4. Nothing in these terms and conditions is to be interpreted as constituting either WDC or the Supplier as agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in these terms and conditions.

20.5. If any provision of these terms and conditions is held invalid, unenforceable or illegal for any reason, these terms and conditions will remain otherwise in full force apart from such provisions, which will be deemed deleted.

20.6. The Supplier's Delivery of Goods and/or Services is non-exclusive and WDC may appoint any other Supplier to provide goods and services identical or similar to the Goods and/or Services.

20.7. No failure or delay on the part of WDC in exercising any of its rights under these terms and conditions shall be construed as constituting a waiver of any such rights.

20.8. This Agreement is governed by New Zealand law.

20.9 Except as otherwise expressly provided, the obligations of WDC under this Agreement are obligations of WDC in its capacity as a contracting party. WDC has certain regulatory and statutory functions, responsibilities and obligations in its capacity as a local authority outside of this Agreement. WDC shall be deemed not to be acting in the capacity as WDC under this Agreement when exercising these functions, responsibilities and obligations in good faith.