

Purchase Order

Standard Terms and Conditions

1. Definitions

The following words shall, where applicable to the context, have the following meaning:

"Authorisations" means any consent, certificate, approval, permit, licence, condition or requirement (as may be updated from time to time) given by a competent authority with jurisdiction in respect of the Supplies.

"Business Days" means a day, other than Saturday or Sunday, on which banks are open for business in Perth, Western Australia.

"Laws" means any Act, ordinance, regulation, by-law, order, award and proclamation applicable in the jurisdiction where the Supplies are being provided and as may be updated or replaced from time to time.

"Supplies" means all Goods, Services and/or Works including products, equipment, advice, labour, and installation.

"Purchaser" means the City of Bayswater.

"Supplier" means the person or business from which the Supplies have been ordered.

"Order" means a Purchase Order, bearing an official order number, transmitted from the Purchaser to the Supplier.

2. General and Statutory Obligations

These terms and conditions apply to the Order for Supplies placed by the Purchaser as described in the Order, except where a contract exists between the Purchaser and Supplier in which case the terms and conditions of that contract shall take precedence over these terms and conditions.

These terms and conditions take precedence over all terms and conditions attached to a quotations, offer or similar provided by a Supplier.

The law governing this Order, in its interpretation and any agreement to arbitrate is the law of the jurisdiction of Western Australia and, if applicable, the Commonwealth of Australia.

3. Offer and Acceptance of Offer

The Supplier is deemed to have accepted an Order and its terms and conditions if the Supplier notifies the Purchaser that the Supplier accepts the Order or delivers the Supplies as described in the Order.

Once an Order is accepted, a binding agreement is formed between the Supplier and Purchaser comprising of the Order and these terms and conditions. These terms and conditions take precedence to the extent of any conflict, ambiguity or inconsistency between these terms and conditions and an Order.

4. Cancellation and Changes

The Purchaser may change or cancel an Order at any time before the Supplier completes the Order.

The Purchaser will be liable to pay for Supplies provided in accordance with the Order at the date of cancellation; and for the cost of materials and other items acquired and/or performed for which the Supplier is legally bound to pay pursuant to any previously agreed notice period.

5. Inspection, Testing and Acceptance

Acceptance of the Supplies shall not be deemed to have occurred until the Purchaser has been given a reasonable opportunity to inspect, test and accept the Supplies as provided and/or completed.

6. Terms of Payment

The Purchaser agrees to pay the Supplier the fees specified in the Order upon provision of the Supplies specified in the Order, and submission by the Supplier to the Purchaser of a payment claim and a tax invoice that comply with relevant Laws.

Where the Building and Construction Industry (Security of Payment) Act 2021 (WA) Act is applied, if the Purchaser disputes any amount claimed in a payment claim from the Supplier, the Purchaser will issue a payment schedule to the Supplier within 15 Business Days of receipt of the payment claim. The payment schedule must: (a) be given in writing; (b) identify the payment claim to which it relates; (c) indicate the amount (if any) the Purchaser proposes to make (Scheduled Amount); (d) if the Purchaser does not propose to make any payment, indicate that this is the case; and (e) if the Scheduled Amount is less than the amount claimed or no payment is proposed, indicate (i) why the Scheduled Amount is less or no payment is proposed; and (ii) if the reason is that the Purchaser is withholding payment, the reason why it is withholding payment.

If the Purchaser issues a payment schedule, the Supplier will issue to the Purchaser a tax invoice for the Scheduled Amount within 2 Business Days of receipt of the relevant payment schedule.

The Purchaser will pay the Supplier amounts due to the Supplier in respect of a payment claim within 20 Business Days of receipt of that payment claim.

7. Warranties and Standards

The Supplier warrants to the Purchaser that the Supplier holds all Authorisations required to perform its obligations under this Order and that the performance of its obligations under this Order will comply with such Authorisations and all applicable Laws, accepted industry standards, specifications and procedures.

The Supplier further guarantees that all Supplies provided against this Order are of merchantable quality and are fit for the purpose for which they are provided.

The Supplier guarantees the Supplies against all defects arising from faulty materials, workmanship or design for a period of twelve (12) months from the date of acceptance by the Purchaser.

Should Supplies be found to be faulty, any defective components of the Supplies shall be promptly repaired or replaced at the Supplier's cost, which shall include all transport, packaging or any other associated charges.

The Supplies shall be of the qualities, quantities and standards specified in the Order and shall conform to the description, specifications, plans, drawings, samples and other particulars as specified on the Order.

All Supplies provided, where relevant, shall comply with applicable Australian and International Standards.

8. Performance of the Services

If the Supplies are delivered onto the Purchaser's premises or land which is under the care, control or management of the Purchaser, the Supplier shall not interfere with and use their best efforts to minimise disruption to activities of the location; and shall ensure that at the completion of the Supplies, the premises or land is left secure, clean, orderly, and fit for immediate use.

9. Contract Price

The price for the Supplies stated in this Order is firm and not subject to rise and fall.

The Supplier is liable for all taxes, duties or government charges relating to the delivery or performance of the Supplies to the nominated delivery point.

10. Time and Delivery

The Supplies shall be provided at the times and places set out in this Order, or as otherwise agreed in writing by the Supplier and Purchaser. Time shall be of the essence in all cases.

11. Title and Risk

Title in the Supplies will pass to the Purchaser upon payment for the Supplies.

Risk in the Supplies will pass to the Purchaser on delivery of the Supplies to the nominated delivery point.

12. Indemnity and Insurance

The Supplier agrees to indemnify the Purchaser and its employees against any loss, expenses, demands or liability, whether direct or indirect, arising out of any claim in respect of infringement of intellectual property rights, patent, copyright, registered design, or trademark, by reason of the Purchaser's receipt of

any Supply, or of any act or omission involving fault on the Supplier's part in relation to the Supplies for this Order.

The Supplier shall for as long as any obligations in connection with the Supplies remains current, maintain appropriate insurance policies including but not limited to Public and Products Liability to the value of twenty million dollars (\$20,000,000 AUD), Work Cover Registration and Professional Indemnity.

The Supplier shall provide copies of certificates of currency for related insurance policies at the Purchaser's reasonable request.

13. Intellectual Property

The title to all intellectual property rights or in relation to material created as a result of this Order shall, upon its creation, be vested with the Purchaser.

The Supplier must ensure that the material is used, copied or reproduced only for the purposes of this Order.

The Supplier warrants that in provision of the Supplies, no intellectual property rights have been infringed.

14. Confidentiality and Conflict of Interest

Except for purposes directly related to this Order, the Supplier must not, without the Purchaser's written approval, make public or disclose any confidential information.

The Purchaser may impose such terms and conditions as it believes appropriate on any approval.

The Purchaser is subject to any Laws in force at any time with respect to disclosure of information and must comply with its obligations under any such Laws.

The Supplier warrants that at the date of this Order, no conflict of interest exists or is likely to arise under its obligations with respect to this Order. If during the fulfilment of this Order, a conflict of interest arises, the Supplier must notify the Purchaser immediately in writing.

15. Health and Safety

The Supplier must comply with all relevant state and federal work health and safety Laws and any directions of the Purchaser regarding health and safety in respect of the Supplies.

The Supplier shall communicate to and provide to the Purchaser all information held by or reasonably available to the Supplier regarding any potential hazards or special requirements in the transport, packaging, storage, handling or use of any Supply. The Supplier will provide to the Purchaser all certificates in respect of the Supplies required for the Purchaser to comply with its obligations at Law.

16. Environmental Sustainability

The Supplier shall deliver the Supplies, where possible, in a manner which conserves resources, saves energy, minimises waste, protects the environment, and maintains safety and quality.

17. Termination

In the event of any breach by the Supplier of any of these terms and conditions, the Purchaser may, at its option and without prejudice to any of its rights and remedies, cancel all and any undelivered Supplies upon reasonable notice in writing to the Supplier.

18. Force Majeure

No failure or omission to carry out or observe any of the stipulations of this Order and its terms and conditions shall, except as herein expressly provided to the contrary, give rise to any claims against either party or be deemed to be a breach of these terms and conditions, if such failure or omission arises from a cause reasonably beyond the control of either party.