



# Frankston City Council - Purchase Order Terms and Conditions

## 1. Definitions

The following terms will, if not inconsistent with the context, have the meanings indicated:

**Contractor** means the party described as such in the Purchase Order.

**Council** means the Frankston City Council (ABN 49 454 768 065).

**Delivery Date** means the date set out in the Purchase Order being the final date which the goods must be supplied.

**Purchase Order** means the Purchase Order placed by Council including these Terms.

**Purchase Price** means the total amount shown on the Purchase Order.

**Supply** means the consultancy, works, goods and/or services specified in the Purchase Order.

## 2. Completion

The Contractor must provide, perform or deliver the Supply on or before the Delivery Date in accordance with the Purchase Order. If no Delivery Date is provided, the Contractor must perform the Supply with due expedition and without delay.

## 3. Warranties

In addition to other warranties in the Purchase Order and implied by law, it is a condition of the Council's purchase of the Supply that:

- 3.1 the Supply will be new, unless agreed otherwise;
- 3.2 the Supply will be fit for the purpose for which items of the same kind are commonly supplied and consistent with any description and details set out in the Purchase Order;
- 3.3 the Supply are merchantable quality and free from defects;
- 3.4 the Supply will be supplied with due skill, diligence and care;
- 3.5 the Supply will be compliant with all recognised standards and laws applicable in the jurisdiction; and
- 3.6 the Contractor is capable of passing title in the Supply free of encumbrances and all other adverse interests at the time they are supplied to Council.

## 4. Variation or Termination

4.1 Council may, at any time, by giving written notice to the Contractor, terminate the Purchase Order and the Contractor must on receipt of such notice immediately cease all work in connection with the Supply and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event Council will pay the reasonable fees and expenses of the Contractor in accordance with the Purchase Order. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had the Purchase Order been completed.

4.2 Council may at any time give written notice to the Contractor proposing a variation to the quantity of the Supply. The Contractor must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply for the provision of the varied Supply. Council may accept the varied Purchase Price proposal within 7 days of receipt from the Contractor but in the absence of such acceptance the Purchase Order will continue as if no proposal under this Term had been made.

## 5. Confidentiality

The Contractor will not disclose, and will ensure that its employees, agents and contractors do not disclose, any confidential information relating to Council or its affairs which may come to its or their knowledge during the term of the Purchase Order without the prior written consent of Council.

## 6. Acceptance and Rejection of Supply

All risk in the Supply remains with the Contractor until the Supply are fully delivered to the delivery location and the Supply are accepted by Council. Council may reject any of the Supply which do not comply in any respects with the Purchase Order. Council is not required to make payment for any rejected Supplies.

## 7. Payment

If the Contractor complies with its obligations under the Purchase Order, Council must pay the Purchase Price to the Contractor by the method agreed with the Contractor. Payment shall be made within 30 days after delivery of the Supply and receipt of a correctly rendered invoice.

## 8. Goods and Services Tax ("GST")

The Purchase Price is inclusive of GST. Where Council is required to pay the Contractor any amount under the Purchase Order on account of GST, the amount representing GST will only be payable by Council to the Contractor where the Contractor supplies to Council a tax invoice for GST purposes, in a form approved by Council.

## 9. Default by Contractor

- 9.1 If the Contractor defaults in the performance or observance of any obligation it has under the Purchase Order, Council may give notice to the Contractor specifying the default and requiring that such default be remedied within 14 days.
- 9.2 If, within 14 days after receipt of the notice, the Contractor fails to remedy the default, to the satisfaction of Council, Council (without prejudice to any other rights that it may have under the Purchase Order or at common law against the Contractor) may:
  - 9.2.1 suspend payment under the Purchase Order; or
  - 9.2.2 terminate the Purchase Order and any other purchase order between the parties.

## 10. Insolvency of Contractor

If the Contractor:

- 10.1 being a person, commits any act of bankruptcy; or
  - 10.2 being a company, commits any act of insolvency,
- Council may terminate the Purchase Order immediately.

## 11. Sub-Contracting and Assignment

The Contractor must not, except with the written consent of Council, sub-contract or assign the whole or any portion of its rights and obligations under the Purchase Order, and no sub-contractors or assignees will have any rights under the Purchase Order against Council or be entitled to receive any payments under the Purchase Order from Council. Where Council gives its consent to the Contractor in accordance with this Term, the Contractor remains fully responsible for performance under the Purchase Order.

## 12. Statutory Requirements

The Contractor must obey and must ensure that its employees, subcontractors and agents obey any Acts, regulations and local laws in any way applicable to the performance of the Purchase Order, including, without limitation, any occupational health and safety legislation and working with children requirements under the *Worker Screening Act 2020* (Vic), *Child Wellbeing and Safety Act 2005* (Vic) and the *Children, Youth and Families Act 2005* (Vic). The Contractor must also comply with the any supplier code of conduct published by Council, including the

"Child Safety and Wellbeing Policy" and associated reporting procedure. The Contractor must provide a current safe work method statement or equivalent to Council prior to the commencement of work to the satisfaction of Council.

## 13. Indemnity and Advance Release

- 13.1 The Contractor indemnifies and holds harmless Council, its Councillors and staff from and against all actions, claims, losses, damages, penalties or demands consequent upon, occasioned by or arising from its performance or purported performance of its obligations under the Purchase Order, including, without limitation, any acts or omissions of the Contractor's agents and employees.
- 13.2 The obligation to indemnify is reduced proportionately to the extent the loss was caused by an act or omission of Council.

## 14. Insurance

Unless Council expressly agrees otherwise, prior to commencing the Supply the Contractor must effect and maintain, at its own cost and expense, the following insurances with an insurer who is licensed or authorised to operate in Australia by APRA and holds an Australian Financial Services Licence:

- 14.1 workers compensation or employers' liability insurance, covering all claims and losses for death or bodily injury to any person employed or engaged by the Contractor or any contractor of the Contractor;
- 14.2 motor vehicle and third party liability insurance required by law, and motor vehicle third party liability insurance with a policy coverage of the amount stated in the Purchase Order (or if none stated, \$10,000,000 per occurrence) in relation to any vehicles used in the transportation or delivery of any goods, or the provision of any works that form part of the Supply;
- 14.3 product liability and public liability insurance in relation to legal liability for physical loss of, loss of use of, damage to or destruction of real or personal property, death or bodily injury with a policy coverage of the amount stated in the Purchase Order (or if none stated, \$10,000,000 per occurrence);
- 14.4 professional indemnity insurance with a policy coverage of the amount stated in the Purchase Order (or if none stated, \$5,000,000 per occurrence)
- 14.5 if the Supply involves carriage of any goods or equipment, transit risk insurance covering all loss or damage to such goods or equipment arising from any insurable cause while in transit;
- 14.6 if required in the Request for Quotation, works insurance with a policy coverage of the amount of the Purchase Price; and
- 14.7 any other insurances that are reasonably required by Council or required at law.

## 15. Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in the Purchase Order.

## 16. No Relationship

Nothing in the Purchase Order will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in the Purchase Order will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

## 17. Whole Understanding

- 17.1 The Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Supply are to be provided, performed or delivered by the Contractor. If the Contractor's acceptance or supply of the Purchase Order contains any terms in conflict with the Purchase Order, the Purchase Order will have precedence unless otherwise agreed by Council in writing.
- 17.2 Where the Purchase Order is under an existing contract, Contract terms and conditions will prevail over these terms and conditions.

## 18. Governing Law

The law of the State of Victoria governs the Purchase Order and any legal proceedings under the Purchase Order.

## 19. Joint and Several Obligations

If the Contractor consists of two or more parties, the Purchase Order binds each of them severally and jointly.

## 20. Notices

- 20.1 A notice required or permitted to be given by one party to another under the Purchase Order must be in writing, addressed to the other party and:
  - 20.1.1 delivered to that party's address; or
  - 20.1.2 transmitted by email to that party's email number.
- 20.2 A notice given to a party in accordance with subclause 21 must be treated as having been duly given and received:
  - 20.2.1 if delivered to a party's address, on the day of delivery; or
  - 20.2.2 if transmitted by email to a party's email address, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered.

## 21. Intellectual Property

- 21.1 The Contractor warrants that it owns or is licensed to use all intellectual property required to be used for or associated with the manufacture and provision of the Supply. The Contractor also warrants that where any such intellectual property is owned by third parties, it has the requisite permission and authority from such third parties to grant to Council the licenses.
- 21.2 The Contractor agrees to assign exclusively to Council the copyright and ownership for all artwork, drawings, documents, images, photographs, blueprints, maps, character, calculation, information instructions and other such documents that are prepared or provided in associating with the Supply detailed in the Purchase Order.

## 22. General

- 22.1 This Purchase Order may only be varied or replaced by a document duly executed by the parties.
- 22.2 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by the Purchase Order.
- 22.3 In the Purchase Order, a reference to the singular includes the plural and vice versa, and a gender includes the other genders.