

ŌTOROHANGA DISTRICT COUNCIL

STANDARD PURCHASE ORDER TERMS AND CONDITIONS

These terms & conditions apply to all Purchase Orders issued by Ōtorohanga District Council.

NOTE: New Suppliers

To ensure payment of an invoice, the Supplier will need to be set up in the Council finance system. A Credit Authorisation form will need to be completed and verified bank account details provided to Council. The Ōtorohanga District Council staff member who is arranging the Purchase Order can assist with this.

1. AGREEMENT

1.1 These terms and conditions apply to any purchases made by the Council to the exclusion of any other terms and conditions contained or referred to in any acknowledgement or order, form of contract, letter or other communication from the Supplier, unless the Council and Supplier have signed a written agreement for the provision of the Goods and/or Services, in which case the terms and conditions of that specific agreement will apply and not these terms and conditions.

2. DEFINITIONS

In these terms and conditions:

Agreement means the PO, these terms and conditions, Specifications (if any) and any other terms agreed in writing.

Business Day means any day other than a Saturday, Sunday, or Public Holiday in Ōtorohanga, New Zealand.

Council means the Ōtorohanga District Council.

Goods means the goods specified in the PO/Specifications to be provided by the Supplier.

Intellectual Property means all industrial and intellectual property rights and interests (including common law rights and interests) of any kind including copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, trade, business, domain or company names, moral rights, know how or other proprietary rights (whether or not any of these are registered and including any application for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

PO means the purchase order placed by the Council for the supply of Goods or Services.

Services mean the services specified in the PO/Specifications to be performed by the Supplier.

Specification(s) means the technical and/or any other requirements (if any) in respect of the purchase, provided by the Council to the Supplier.

Supplier means any entity or person, including a Contractor or Consultant, providing Goods or Services to the Council.

3. ACCEPTANCE OF ORDER

3.1 A PO is an offer by the Council to purchase Goods or Services, that is deemed to be accepted upon the Supplier agreeing to or commencing to supply the Goods or Services.

3.2 The Council can withdraw the PO at any time prior to acceptance by the Supplier.

3.3 These terms and conditions are deemed to be accepted upon the Supplier agreeing to or commencing to supply the Goods or Services.

4. PRICE

4.1 The price stated in the PO is exclusive of GST, but is otherwise all inclusive of freight, insurance and any other charges or taxes.

4.2 Any variation to price must be agreed to by both parties and notified in writing prior to acceptance of the PO by the Supplier.

4.3 Council may, acting reasonably, agree to vary the price provided that such variation is based on direct and reasonable costs actually incurred or anticipated to be incurred by the Supplier.

4.4 Should Council refuse to accept a price variation, the disputes resolution process as set out in clause 16 shall apply.

4.5 The price must be in New Zealand dollars.

5. INVOICING AND PAYMENT

5.1 Invoices should be emailed to Ōtorohanga District Council at accounting@otodc.govt.nz.

5.2 If correct tax invoices are received by the 5th Business Day of the month, any undisputed amounts due from the Council will be paid to the Supplier by the 20th day of the following month, for any Services completed or Goods supplied in the preceding month.

5.3 Council will not be liable for late payment penalties if payment is delayed for any reason.

5.4 Invoices should show a breakdown of all labour, materials, and any mileage.

5.5 The Council shall deduct withholding tax where required by law.

6 DELIVERY AND IDENTIFICATION

6.1 The Supplier must have a valid PO number before providing any Goods or Services to the Council.

6.2 All invoices will require the Purchase Order number to be quoted on the invoice. Any invoices received without the Purchase Order number will not be processed for payment and may be returned to the Supplier for resolution.

6.3 Unless otherwise agreed in writing, the Supplier will deliver the Goods to the location specified in the PO. Where no location is specified, the Supplier shall be responsible for contacting the Council to obtain delivery instructions.

6.4 Partial delivery may be accepted at the Council's discretion.

6.5 All Goods or Services shall be delivered within the timeframe agreed between the Supplier and Council. The Council reserves the right to cancel the order if not delivered within the agreed time frame.

7 REJECTION OF GOODS

7.1 The Council reserves the right to have the Goods inspected or tested before, on or after delivery, by an officer appointed by the Council, and the Supplier shall facilitate inspection or testing when required.

7.2 The Council may reject any Goods that are of inferior quality, contrary to the Specifications for the Goods, in an unsatisfactory condition, or not functioning in the way they are designed to function.

7.3 For any such rejected Goods the Supplier must, at the Council's sole option and at the Supplier's sole risk and expense, either:

(a) repair or replace the Goods and reimburse the Council for any loss of function attributable to the Goods; or

(b) remove the Goods and reimburse the Council in full for any payments made by the Council in respect of the Goods.

8. STANDARD OF SERVICE

8.1 The Supplier will exercise due skill and care in providing the Services to the Council in accordance with any Specifications and requirements which the Council advises and using appropriately trained, qualified and experienced personnel.

9. INTELLECTUAL PROPERTY

9.1 Any new Intellectual Property created by the Supplier during the performance of the Services is the exclusive property of the Council.

9.2 In providing the Goods or Services the Supplier warrants that they hold all necessary licences and permissions in respect of all Intellectual Property associated with the Goods and/or Services as the case may be. The Supplier must ensure that the Council has all the necessary rights (and documentation) to gain full benefits of the Goods or Services and any associated Intellectual Property.

9.3 The Supplier will indemnify the Council from any claims or proceedings arising as a result of a breach of clause 9.2 of these terms.

10. TITLE AND RISK

10.1 Title does not pass to the Council until the earlier of: (a) inspection having occurred with confirmation in writing by the Council of its acceptance of the Goods, or (b) the expiry of 5 Business Days after delivery to the address specified in the PO.

10.2 Every risk to any deliverable remains with the Supplier until completion of delivery and acceptance of the Goods.

11. INDEMNITY

11.1 The Supplier shall indemnify the Council, its officers, employees and agents against any loss, damage or expense suffered or incurred by the Council 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; or

(c) any liability incurred by Council in respect of injuries to any third party or damage to property which may arise out of, or in consequence of, the performance of the Supplier's obligations under this Agreement. 11.2 This indemnity shall survive the termination of this Agreement.

12. INSURANCE

12.1 The Supplier is to maintain, at the Supplier's cost, Public Liability Insurance for a minimum value of \$2,000,000.00 at all times during provision of the Goods or Services.

12.2 While providing any professional services to the Council, the Supplier is also to maintain, at the Supplier's cost, Professional Indemnity Insurance for a minimum value of \$2,000,000.00.

13. WARRANTIES

13.1 In addition to any warranties implied by the law the Supplier warrants that the Goods delivered, together with their components, pursuant to this Agreement are:

(a) designed, manufactured, delivered and operated in compliance with all applicable user requirements, Specifications and standards;

(b) new and unused on delivery unless specified otherwise in each case by the Council; and

(c) free from any defects and fit for the purpose intended by the Council.

13.2 Unless agreed otherwise, the Supplier warranty and guarantees to the Council for any deliverable will be for the greater of; 12 months, or the warranty period generally available to the Supplier's customers in the usual course of business or trade.

13.3 Each warranty is to cover any defective labour, materials and performance. The Supplier will, to all extent possible, pass on to the Council the benefit of any warranty or guarantee received from any other person in respect of deliverables supplied, so that the Council may have the benefit of those warranties and guarantees.

14. CONFIDENTIALITY

14.1 The Supplier will keep confidential and secure, and will not misuse, any information of the Council which is marked or indicated as confidential, or would reasonably be expected to be proprietary, commercially sensitive or confidential.

14.2 Disclosure and use of information by either party is allowed to the extent required by law, or to the extent necessary to perform the Agreement.

14.3 The Supplier acknowledges that the Council is subject to the Local Government Official Information and Meetings Act 1987 (LGOIMA). The Council is obliged to disclose Confidential Information under that Act if so requested, unless there is good reason under the terms of that Act to withhold that information.

14.4 The Supplier will not represent or publicise in any way to anyone that it is a Supplier to the Council. The Supplier will not allow media releases or advertising that names or suggests the Council as a client or customer of the Supplier, without the Council's prior written consent.

14.5 This clause 14 shall survive the expiration or termination of this Agreement.

15. HEALTH AND SAFETY

15.1 The Supplier will comply with all relevant health and safety legislation, regulations, applicable codes of practice and standards, the Council's health and safety policies and procedures and any standard operating procedures which may be connected with the provision of the Goods or Services.

15.2 The Supplier must ensure it:

(a) Takes all practicable steps to ensure the health and safety of all personnel of the Supplier, and any other parties associated with the Services, including the Council, workers, visitors, subcontractors, service providers, the public and any visitors to any area under the control of the Supplier;

(b) Comply with all reasonable directions given by the Council in relation to the health and safety in connection with this Agreement.

16. DISPUTES

16.1 If any dispute arises in connection with the Agreement either party may trigger the provisions of this clause by giving written notice of the dispute to the other party.

16.2 The parties shall endeavour to resolve the dispute within ten (10) Business Days of receipt of the written notice of the dispute, through negotiation.

16.3 If the dispute is not resolved through negotiations, either party may, within 10

Business Days of receipt of the written notice of the dispute, request mediation, with the costs of the Mediator to be shared equally between the parties but otherwise each party meeting their own costs. If, after the expiry of 30 working days from the date of the notice raising the dispute, the dispute has not been resolved, either party may seek such other remedies as are available at law.

16.4 The Supplier must continue to perform the Services until the dispute is resolved and unless the Council directs otherwise.

16.5 Neither party may commence legal proceedings in relation to a dispute unless they have first complied with the provisions of this clause (provided however nothing in this clause restricts the right of either party to seek injunctive relief).

16.5 Any disputes shall be resolved in New Zealand.

17. CLAIMS AGAINST ŌTOROHANGA DISTRICT COUNCIL

17.1 In no event will the Council be liable for any consequential loss, damage or expense, including any loss of profit. Any claim against the Council must in writing and delivered within three (3) months of the event to which it relates, and no claim shall exceed the value of the PO to which it is connected.

18. SUSPENSION AND TERMINATION

18.1 If the Council reasonably considers that the Supplier has breached or failed to comply with any clause of this Agreement, or has an inability to perform the required obligations, the Council shall give notice to the Supplier of such a breach or failure. If, within 10 Business Days of receipt of the written notice, the Supplier has not remedied the breach or failure, the Council may suspend or terminate the Agreement

by notice in writing to the Supplier and may select an alternative supplier of the Goods or Services. In this case, any additional costs incurred by the Council may be recovered from the original Supplier.

18.2 The Council may terminate the Agreement by the provision of thirty days written notice.

18.3 Termination or suspension of the Agreement is without prejudice to the rights and obligations of the Parties' accrued up to and including the date of termination or suspension.

19. GENERAL

19.1 The Supplier is and shall remain at all times an independent contractor and is not the servant, employee, partner or agent of Council.

19.2 The Supplier must not assign, subcontract, or otherwise transfer any of its rights, benefits, obligations under this Agreement without the prior written consent of the Council.

19.3 The Council and the Supplier will act in good faith towards one another, and do all things reasonably required to ensure the full benefit of this Agreement.

19.4 No variation or waiver of any of the above terms and conditions shall be valid or take effect, unless agreed to in writing by the Council.

19.5 Termination or expiration of the Agreement will not affect the rights and obligations of the parties as are intended to survive the termination or expiration.

19.6 The Supplier must comply with all laws and standards applicable to the supply of the Goods and/or the Services.

19.7 Modification: This Agreement may not be modified, varied, altered or amended

except by an instrument in writing signed by all parties.

19.8 Effect of Waiver: No waiver of, or delay or omission by the Council, to exercise any right concerning any default in the strict and literal performance, or compliance with any provision, condition or requirement, of these terms and conditions will be deemed to be a waiver of strict and literal performance of and compliance with that of any other provision, condition or requirement of this Agreement.

19.9 Partial Invalidity: If any term, condition or proviso in this Agreement is declared or adjudged to be invalid or unenforceable, that term, condition or proviso will be severable, will be deemed to be deleted from these terms and conditions and will not affect the validity or enforceability of other terms, conditions and provisos in this Agreement.

19.10 Notices: Any notice, document, request, demand or other communication (“Notice”) to be given under this Agreement must be in writing and may be served personally, sent by registered mail or express courier service (within New Zealand) or forwarded by email transmission. Any Notices will be deemed sufficiently given or made when so delivered personally or upon receipt of a confirmation of delivery (if delivered by Courier service) or, in the case of email transmission, when the email is sent (in the absence of any non-delivery notification). Any Notices received either after 5.00pm (local time) on a Business Day or on any day that is not a Business Day will be deemed to have been received by the recipient at 9.00am on the next Business Day. The Council’s address for service of Notices is 17 Maniapoto Street, Ōtorohanga or email info@otodc.govt.nz.

19.11 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 the Council in writing if any conflict of interest arises in relation to the delivery of the Goods and/or Services.