

# Wingecarribee Shire Council Purchase Order - Standard Terms and Conditions



## 1. General

- (a) Every purchase order Wingecarribee Shire Council (**Council**) issues to a person (**Purchase Order**) is an offer to acquire goods and/or services from that person (**Supplier**) subject to these terms and conditions and any written special conditions that Council includes with the Purchase Order (**Special Conditions**) or the terms of any separate contract referred to in a request for quotation or tender process (**Separate Contract Provisions**).
- (b) When a Supplier accepts a Purchase Order, which will be taken to have occurred if the Supplier proceeds to provide the goods and/or services after the date of issue of the Purchase Order, a contract is formed on these terms and conditions and any Special Conditions or Separate Contract Provisions (**Contract**). Unless Council accepts them in writing, any terms and conditions in any quote, offer document, purchase order, acceptance or any other document issued by the Supplier do not form part of the Contract.
- (c) If there is any inconsistency between these standard terms and conditions and the Special Conditions or any Separate Contract Provisions, the Special Conditions or Separate Contract Provisions will prevail to the extent of the inconsistency.
- (d) The Supplier must not assign its rights and obligations under the Contract without Council's *prior written approval*.
- (e) No variation of the Contract will be binding on Council and the Supplier unless in writing and signed by a duly authorised representative of Council and the Supplier.
- (f) Council's failure or delay in doing anything it is entitled to do under the Contract does not amount to a waiver of any obligation of or breach of obligation by the Supplier.
- (g) The Contract will be governed by the law of New South Wales and the parties submit to the jurisdiction in that State.

## 2. Quality and Delivery

The Supplier must:

- (a) Provide any goods specified in the Purchase Order (**Goods**) safely and appropriately to protect the goods from damage;
- (b) Provide any services specified in the Purchase Order (**Services**) in a diligent, professional and workmanlike manner in accordance with the highest applicable industry standards and using appropriately experienced and qualified personnel; and
- (c) Deliver the goods or services specified in the Purchase Order (**Goods/Services**): AND
  - (i) by the date;
  - (ii) to the place (if any); AND
  - (iii) in the quality and quantity (if any); specified in the Purchase Order.

## 3. Ownership and Risk in Goods

- (a) Title of any Goods will pass to Council on acceptance by Council under clause 5(a).
- (b) The Supplier assumes all risk in respect of Goods until the Goods are accepted by Council.

## 4. Warranties

- (a) In addition to any warranties implied by law, the Supplier warrants that:
  - (i) the Goods/Services are free from defects in material and workmanship and are of merchantable quality;
  - (ii) it has a right to provide the Goods/Services
  - (iii) the Goods are free from any charge or encumbrance in favour of any third party not declared or known to Council before or at the time the Purchase Order is made;
  - (iv) the Goods are of the description, quantity and quality specified in the Purchase Order;
  - (v) the Goods are fit for purpose;
  - (vi) the Goods/Services comply with all applicable Australian standards and legislation and
  - (vii) the Goods do not infringe any patent, registered design, trademark or name, copyright or any other protected right.
- (b) The Supplier will ensure that any warranty offered by a manufacturer of the Goods is enforceable by Council.
- (c) For the avoidance of doubt Council may treat any breach of the warranties in this clause 4 by the Supplier as a repudiation of the Contract giving rise to, without limitation, the remedies specified in clause 6.
- (d) The Supplier warrants that it complies with the *Fair Trading Act 1987 (NSW)* and the *Competition and Consumer Act 2010 (Cth)*.

## 5. Acceptance and Rejection

- (a) Council may, at any time before acceptance, reject the Goods/Services if Council believes the Goods/Services are defective, or do not comply with the requirements of the Contract or the warranties specified in clause 4 above. Council, prior to rejection, may unpack, inspect and test the Goods for this purpose.
- (b) Council may, at any time after acceptance under paragraph (a), reject the Goods/Services if Council believes the Goods/Services are defective, do not comply with the warranties specified in clause 4 above or do not meet the requirements of the Purchase Order or Contract, provided that the defect or non-compliance could not have been discovered prior to acceptance.
- (c) If Council rejects the Goods/Services (or any part of the Goods/Services) the Supplier must comply with a requirement of Council to:
  - (i) collect the defective or non-compliant Goods and replace it at the Supplier's expense;
  - (ii) rectify the defective or non-compliant Services; OR
  - (iii) refund Council any amount paid for the defective or non-compliant Goods/Services.
- (d) The parties expressly agree that the rights of Council pursuant to paragraph (c) above apply notwithstanding that the matters in clause 4 are described as warranties.

## 6. Cancellation

- (a) If the Supplier is unable to supply the Goods/Services as specified, it must promptly notify Council, and if the Goods/Services are completely unavailable, the Supplier may offer another Good/Service as a substitution. Council may accept or reject the substitute Goods/Services in its absolute discretion.
- (b) The substitution of the Goods/Services must be approved by both parties in writing.

- (c) Council may (at any time before delivery), cancel or change the Purchase Order due to a change in specific circumstances directly related to the Purchase Order, or in respect of poor performance of Services. If this occurs, AND:
  - (i) the change causes an increase or decrease in the quantity of the Goods/Services, or time required to deliver the Goods/Services, an equitable adjustment will be made and agreed by both the Council and the Supplier appropriate to the circumstances;
  - (ii) the Supplier has already incurred any reasonable expense in satisfying the Purchase Order, Council will pay those expenses.

## 7. Price, Payment Terms, GST

- (a) The total price payable by Council to the Supplier for any Goods/Services will be the total price shown on the Purchase Order. The total price is GST Inclusive.
- (b) The total price payable may change by agreement between the Council and the Supplier subject to these standard terms and conditions.
- (c) The Supplier must have an Australian Business Number (ABN). Council requests the Supplier to issue a tax invoice for the Goods/Services within twenty-eight days from the date the Goods/Services are accepted by Council. The Supplier's tax invoice(s) are to show all the details required by A New Tax System (Goods and Services Tax) Act 1999.
- (d) If the Supplier is not registered for GST and is not required to be registered for GST, Council requests the Supplier to issue an invoice for the Goods/Services within twenty-eight days from the date the Goods/Services are accepted by Council.
- (e) A (tax) invoice must identify the number shown on the Purchase Order. Each (tax) invoice must also include ABN and the name of the Supplier that is recorded in the Australian Business Register for that ABN. Otherwise, Council will withhold an amount from the payment and send it to the Australian Taxation Office.
- (f) Council will pay the Supplier within the agreed timeframe terms of payment with the Supplier.
- (g) Council will not provide any upfront payments or deposits prior to receiving any Goods/Services.
- (h) Despite clause 7(f), Council may consider progress payments for payment of part received Goods/Services if specified in the Special Conditions, or otherwise at Council's discretion.

## 8. Indemnity and Release

- (a) The Supplier indemnifies Council against any and all claims by a third party that may be sustained, suffered recovered or made in respect of any loss, personal injury, death or damage arising out of or in connection with the performance by the Supplier of this Contract.
- (b) The Supplier releases Council from any claim it may have against the Council arising in connection with the performance of the Supplier's obligations under this Contract except if, and to the extent that, the claim arises because of the Council's negligence or default

## 9. Insurance

Subject to the Special Conditions, at a minimum the Supplier must maintain the following policies of insurances (and provide copies on request):

- (a) Public Liability: Amount per occurrence shall not be less \$20,000,000 (AUD) AND
- (b) Workers Compensation, as per legislation OR where individual trader (no employees);
  - (i) Personal Accident & Illness Insurance OR;
  - (ii) Personal Income Protection Insurance

## 10. Work Health and Safety

- (a) When engaged to undertake works for Council, the Contractor is responsible for ensuring that it inspects the relevant workplace prior to undertaking any work and must provide Council with a documented Safe System of Work (e.g. Safe Work Method Statement, Risk Assessments and SOPs) that are applicable to the workplace and satisfies any relevant Australian Standards, WHS Legislative and SafeWork requirements.
- (b) The Contractor must be formally inducted to Council's work site prior to undertaking works for Council.
- (c) The Contractor must declare and advise Council and/or relevant authorities the details of any breaches of work, health and safety obligations or any prosecutions by SafeWork.
- (d) The Contractor acknowledges that it is required to be inducted and comply with Council's Safe Systems of Work (e.g. Safe Work Method Statements, Risk Assessments and SOPs) and Council directions.

## 11. Chain of Responsibility Legislation

- (a) The supplier and / or transport company responsible for the delivery of all goods and / or services to Council must ensure full compliance with the Heavy Vehicle National Law whilst delivering said goods and / or services.
- (b) Council reserves the right to inspect all inbound and outbound Heavy Vehicles entering or leaving a Council premise or worksite to ensure compliance with load restraints, mass control, container weight, heavy vehicle maintenance, speed management, driver fatigue and fitness (including alcohol and drug management) laws and regulations.
- (c) Contractor must ensure of heavy vehicle operators (including the Contractors' employees, contractors and subcontractors) cooperate with Council's Heavy Vehicle Inspection procedures to include submitting all requested documentation and the completion of forms at Council's direction.
- (d) Council will reserves the right to take any necessary corrective action to eliminate any known breach of the Heavy Vehicle National Law. This may include but not limited to issuing notices, unloading deliveries, advice to stand down heavy vehicles and their operators and rejected deliveries.
- (e) In the event that the Contractor has any concerns regarding a potential breach to the Heavy Vehicle National Law, then the Contractor must highlight the concern with the respective Council Officer ordering the goods and services, to then discuss the concerns and potentially alter the delivery circumstances to ensure that a breach to the Heavy Vehicle National Law is prevented.