

City of Mount Gambier Purchasing Standard Terms and Conditions

Standard Terms and Conditions

This document, City of Mount Gambier Standard Terms and Conditions, contains the standard terms and conditions of purchase referred to in the purchase order submitted by the Council to the Supplier. These standard terms and conditions together with a completed purchase order constitute a binding legal contract between the Council and the Supplier.

The Supplier, upon accepting the purchase order, acknowledges they have read and understood the standard terms and conditions set out on Council's website and accepts the standard terms and conditions as binding.

1. Definitions and Interpretation

In this document, unless otherwise indicated:

Contract refers to the standard terms and conditions of purchase for supply of goods and services.

Contract Documents means this contract together with the purchase order.

Council refers to the City of Mount Gambier unless otherwise specified.

Legislative Requirements means the requirements of all Acts of Parliament of the Commonwealth and/or of the State of South Australia, all ordinances, rules, regulations, by-laws, proclamations and orders made or issued under any such Acts and all codes of practice, directions, orders and requirements of any governmental agency empowered to issue the same under any such Acts.

Liabilities means all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature.

Goods means the goods or materials supplied by the Supplier to the Council.

Purchase Order means the purchase order completed by the Council requesting the supply of the goods or services by the Supplier.

Price means the amount payable by the Council to the Supplier for the supply of the goods or services specified in the purchase order.

Services means the services to be provided by the Supplier to the Council.

Supplier refers to the entity supplying goods or services to the Council and for the purposes of the contract documents includes employees, agents and contractors of such Supplier.

Unless otherwise provided in the purchase order, all references to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities and dimensions and units shall be in terms of Commonwealth legal units.

2. Formal Contract Take Precedence

Where the purchase order is issued by the Council pursuant to an existing formal contract/agreement between the Council and the Supplier, the terms and conditions of that formal contract shall govern the rights and obligations of the parties with respect to the purchase order. In any other case, this standard terms and conditions document will govern the legal relationship between the Council and the Supplier insofar as it applies to the subject matter of the relevant purchase order.

3. Contract

This standard terms and conditions document constitutes the entire agreement between the Supplier and the Council, and where the Supplier provides the Council with an invoice or document containing terms and conditions, the Suppliers' terms and conditions do not have any effect or operation. If there is any inconsistency between the purchase order and this contract, the terms and conditions of this contract prevail.

4. General Scope of Contract

4.1 In relation to the supply of goods this contract requires the Supplier to supply to the Council the goods of description, nature, specification, quantities, size and at the price specified in the purchase order and deliver such goods to the Council at a place and in a manner specified in the purchase order or otherwise requested by the Council.

4.2 In relation to the supply of services, this contract requires the supplier to provide the services of description, nature, specification and in the manner requested by the Council in the purchase order or otherwise requested by the Council in writing. The services must be provided at such time and place and within such time period as may be set out in the purchase order or otherwise requested by the Council. All services must at all times be provided by qualified and experienced personnel, with due care and skill in a reasonable, professional and prompt manner and meet all Council's specifications with respect to services. The services must be provided at the price set out in the purchase order.

4.3 Any supply of goods or provision of services by the Supplier must comply with all applicable Legislative Requirements and the Supplier must supply appropriate facilities, materials, plant, equipment and protective clothing (if applicable) necessary to carry out the services.

5. Sub-Contractors

The Supplier must not engage sub-contractors to perform any of its obligations under the contract documents without prior written approval of the Council. Council may refuse approval at its absolute discretion. Where the use of sub-contractors is permitted it is at the sole cost of the Supplier. It remains the responsibility of the Supplier to comply with the terms and conditions set out in this contract document.

6. Quality

The quality of the goods delivered or the nature of services provided shall not differ from that specified. A new purchase order must be issued where change affects price or quality.

7. Statutory Requirements

The Supplier will ensure that in its supply and delivery of the goods and its performance of the services the Supplier fully complies with all Legislative Requirements. Where necessary, the Supplier shall secure all necessary approvals and pay all fees incurred in connection with the sale, supply or delivery of the goods or the services to the Council.

8. Standards of Goods or Services

- 8.1 The Supplier warrants that all goods and services comply with any relevant;
- 8.1.1 Australian Standards;
 - 8.1.2 Where no such Australian Standards exist, standards published by the International Organisation for Standardisation (ISO); or
 - 8.1.3 Where no such Australian Standards or standards published by the ISO exist, a standard reasonably expected for the relevant industry.
- (together, the "Standards").
- 8.2 If the Council procures any goods or services which would, if delivered as described in the purchase order, fall below the Standards, the Supplier must provide the Council written notification identifying:
- 8.2.1 Which components of the goods or services would fall below the Standards;
 - 8.2.2 A description of the particular feature that would cause the goods or services to fall below the Standards; and
 - 8.2.3 A reference to the full text of each relevant Standard.

8.3 Following the process set out in clause 8.2, the Council may (in addition to any other rights the Council have):

- 8.3.1 Amend any descriptions or price of the goods or services; or
- 8.3.2 Direct the supplier in writing to deliver the goods or services.

8.4 If the Council proceeds under clause 8.3.1, the Supplier must provide reasonable assistance in the process set out in that clause at no extra cost to the Council.

8.5 If the Council proceeds under clause 8.3, the Supplier may not commence work on the goods or services until it receives written direction as set out in that clause.

9. Delivery

9.1 Delivery of goods shall be made to such locations and at such times as shall be nominated by the Council.

9.2 Upon delivery, the goods shall be accompanied by a delivery document with the Council's purchase order number specified. A separate invoice shall be delivered to the Council within three (3) days of delivery which shall state clearly the contents and date of the delivery.

9.3 The price shall be inclusive of all freight insurance and other charges connected to forwarding the goods to the Council.

9.4 All elements of the goods delivered by the Supplier are at the risk of the Supplier. No liability to pay for goods shall arise until that element of the goods are approved by the Council and delivery is accepted in writing or by counter-signature.

9.5 Upon return of any such element of the goods that are not acceptable to the Council, the Supplier shall reimburse the Council for:

- 9.5.1 Any amounts paid by the Council on account of the price of the returned element of the goods; and
- 9.5.2 Any costs incurred by the Council in connection with the delivery or return of the relevant element of the returned goods.

10. Acceptance of Goods

The Council shall only be obliged to accept delivery of the goods if compliant with the contract documents and if the delivery of the goods does not comply with the contract documents in any respect, then the Supplier shall, if so required by the Council, remove all such rejected elements of the goods and replace them with a delivery of the goods acceptable to the Council. All freight, insurance and other charges whatsoever in connection with the return of that element of the goods wrongly supplied and the delivery of a further supply of the goods shall be paid and borne by the Supplier.

11. Invoicing and Payment

11.1 The Supplier must provide an invoice (in a PDF electronic file) to the email address accounts@mountgambier.sa.gov.au to the Council on the completion of supply of the goods or services specifying the relevant purchase order number.

11.2 The Council shall pay, by electronic funds transfer, the price to the Supplier by the last business day of the calendar month following the month in which the invoice is dated provided that the goods are supplied and the services are provided in the manner set out in the contract documents.

12. Samples and Monitoring

12.1 The Council may require, as a condition of delivery of any element of the goods, the Supplier to supply a sample of the relevant goods for testing and approval by the Council. In the event that such a sample is produced and approved, then any delivery of that element of the goods which is referable to the sample shall be of a size, nature and quality consistent with that of the approved sample. In the event that such a sample is rejected by the Council, the Supplier must remove the goods and supply the goods to the satisfaction of the Council, at the Supplier's cost.

12.2 The Council may monitor the Supplier's performance of the services. If, after monitoring the services, the Council is dissatisfied with the Supplier's performance of the services the Council may:

- 12.2.1 Request that the supplier at its cost provide the goods or services to the satisfaction of the Council; or
- 12.2.2 Procure the goods or services from a third party and set-off the cost of procuring the services from the third party and the cost of monitoring the Supplier's performance of the goods or services pursuant to this contract.

13. Set Off

The Council is entitled to deduct from amounts otherwise payable to the Supplier by the Council any amount due from the Supplier to the Council pursuant to the terms and conditions of this contract.

14. Property in the Goods

Where any part of entire payment for any element of the goods is made by the Council the entire title to a property shall pass without exclusion or limitation but subject to the Council's right to subsequent rejections in the event that the relevant element of the goods is discovered to not comply with the terms of the contract documents.

15. Variation

Any variations to the purchase order must be in writing.

16. Warranty

16.1 The Supplier warrants that it has full legal capacity to enter into the contract documents and perform its obligations under the contract documents.

16.2 The Supplier warrants in addition to any warranty or guarantee implied by law that all of the goods delivered to the Council:

- 16.2.1 Will conform to the relevant description of the goods contained in the contract documents;
- 16.2.2 Shall be of good merchantable quality and fit for the known purpose for which it is sold;
- 16.2.3 Are new (unless otherwise specified);
- 16.2.4 Are free from all liens and encumbrances and the supplier has a marketable title to the goods.

16.3 The Supplier warrants that:

- 16.3.1 In the supply of the services it will not do any act, matter or thing prejudicial to the goodwill, commercial reputation or public image of the Council;
- 16.3.2 It will supply the services with all due care and skill in accordance with any legal requirements.

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- 17. Intellectual Property**
- 17.1 Other than any drawings or specifications provided by the Council to the Supplier, the Supplier warrants that the services will not infringe the Intellectual Property of any third party.
- 17.2 The ownership of Intellectual Property produced as a result of these standard terms and conditions vests solely in the Council immediately on its creation.
- 17.3 The Supplier is granted a royalty free non-transferable non-exclusive license to use any Intellectual Property:
- 17.3.1 Produced as a result of this contract; or
- 17.3.2 Relating to the drawings and specifications or the confidential information provided by the Council to the Supplier; solely for the purpose of completing the Services and for no other purpose.
- 18. Indemnity**
- The Supplier indemnifies and will keep indemnified the Council with respect to any liabilities of any kind whatsoever (including personal injury or death of any person or damage to property of any person or the Council) resulting from or connected with the Supplier's supply of the goods or services to the Council, including those arising out of or in connection with the breach of the contract documents by the Supplier, or any act or omission (including negligent act or wrongful conduct) of the Supplier, its employees, contractors or agents and failure to comply with any statutory requirements.
- 19. Insurance**
- The Supplier shall take out and keep current during the period of this Contract a public risk insurance policy in the name of the Supplier for a minimum sum of ten million dollars (\$10,000,000) insuring against all actions, costs, claims, damages or charges and expenses which may be brought or made or claimed against the Supplier arising out of or in any way relating to the contract.
- 20. Legal Relationship**
- Nothing constitutes the Supplier as the partner, joint venture, servant, agent or employee of the Council for any purpose whatsoever.
- 21. Jurisdiction**
- The laws in force in the State of South Australia shall apply to this contract and the parties shall submit to the jurisdiction of the courts of South Australia.
- 22. Assignment**
- The Supplier shall not, without the prior written approval of the Council, assign the contract or assign, mortgage, charge, encumber any of the moneys payable under these standard terms and conditions.
- 23. Part Acceptance Offer**
- Where the Council has accepted any element of the goods that constitute part of a purchase order the Council shall pay the Supplier that part of the price attributable to that element of the goods accepted.
- 24. No Waiver**
- No failure or delay on the part of a party to exercise any right or remedy available to it shall operate as a waiver of any right or remedy nor shall any single or partial exercise of any such right or remedy preclude any other further exercise of any right or remedy.
- 25. Special Conditions**
- Any special conditions that the Council shall incorporate on the purchase order shall be incorporated into these standard terms and conditions and in the event of any inconsistency with the terms of this contract the special conditions prevail.
- 26. Time of the Essence**
- Time shall be of the essence as regard to any date or period under this contract.
- 27. Goods and Services Tax**
- Definitions:
- GST** has the same meaning it does in section 195-1 of the GST Act;
- GST Act** means a new tax system (Goods and Services Tax) Act 1999 any related or similar legislation;
- Supply** has the same meaning it does in section 9-10 of the GST Act and excludes "GST free supplies" and "input taxed supplies" as those terms are defined in section 195-1 of the GST Act;
- Recipient and Supplier** have the respective meanings ascribed to those terms in the GST Act.
- 28. Work Health & Safety and Return to Work SA**
- Where applicable:
- 28.1 The Supplier must comply with the Work Health and Safety Act 2012 (SA), any regulations made under it and any associated policies adopted by the Council, and must ensure that its employee and contractors comply with all laws, regulations, notices and codes of practice having application to this contract.
- 28.2 The Supplier must comply with the Return to Work Act 2014 (SA) and any regulations made under it.
- 28.3 The Supplier must comply with all directions and procedures relating to security and work health and safety as required by the Council.
- 28.4 The Supplier must immediately notify the Council of any incident or accident arising from the performance of this agreement, including any incident or accident involving the public.
- 29. Force Majeure**
- No party is liable for any failure to perform or delay in performing its obligations under this contract if that failure or delay is due to anything beyond that party's reasonable control. If that failure or delay exceeds 60 calendar days, the Council may terminate this agreement with immediate effect by giving notice to the other party.
- 30. Termination**
- 30.1 The Council may immediately terminate this agreement by giving notice to the Supplier if the Supplier:
- 30.1.1 Ceases to carry on business or becomes otherwise unable to perform its obligations under this contract;
- 30.1.2 Breaches a provision of this contract and fails to remedy the breach within a specified reasonable time, defined by Council, after receiving notice requiring it to do so;
- 30.1.3 Becomes an externally-administered body corporate under administration or becomes insolvent (each within the meaning of the *Corporations Act 2001*).
- 30.2 Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.
- 31. Audit**
- The Supplier must keep the Council fully and regularly informed as to all matters relating to the goods and services and must provide to the Council any information reasonably requested by the Council for the purposes of monitoring the performance of the Supplier's obligations under these standard terms and conditions.
- 32. Disputes**
- All disputes or differences between the Council and the Supplier, that cannot be mutually rectified, shall be referred to an arbitrator commonly agreed upon by the parties.
- 33. Confidential Information and Freedom of Information**
- 33.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes contemplated by this agreement, and agrees that it will:
- 33.1.1 keep confidential; and
- 33.1.2 not use or reproduce in any form;
- Any confidential information belonging to the other party. A party may depart from its obligations under this clause only with the written consent of the other party or as required by law or the terms of this agreement.
- 33.2 The Supplier consents to any disclosures made as a result of the Council complying with its obligations under the *Freedom of Information Act 1991* (SA), subject to any legally required consultation.
- 33.3 Subject to clause 33.1, for the purposes of the FOI Act, the terms and conditions specified confidential in the purchase order are confidential (confidential sections).
- 33.4 Unauthorised disclosure of the confidential sections and their subject matter is a breach of these standard terms and conditions.
- 34. Ombudsman**
- The Supplier acknowledges that the *Ombudsman Act 1972* (SA) empowers the Ombudsman to investigate matters in the public interest. The Supplier must ensure compliance with all obligations arising under that Act and all other applicable laws.
- 35. ICAC**
- The Supplier acknowledges and agrees that by entering into this contract with the Council the Supplier will be considered to be a public officer, for the purposes of the *Independent Commissioner Against Corruption Act, 2012* (SA) (ICAC Act) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.