

Benalla Rural City Council – Purchase Order Goods and Services Conditions

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1 Formation of contract

The Principal has issued a Purchase Order for the supply of the Goods and/or the Services. The Purchase Order creates a contract between the Supplier and the Principal on the terms referred to in the definition of the word "Contract" in Clause 2.

If the Purchase Order refers only to the supply of Goods, references to "Services" shall be disregarded and vice versa. For the avoidance of doubt, a Purchase Order may refer to the supply of both Goods and Services.

2 Definitions

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

Code of Practice means a code of practice as defined in, and approved under, *the Information Privacy Act 2000 (Vic)*.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to, Benalla Rural City Council, including any information designated by Benalla Rural City as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information:

- (i) which is in or which subsequently enters the public domain other than as a result of a breach of these Conditions;
- (ii) which the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (iii) which the Supplier can demonstrate was independently developed by the Supplier; or
- (iv) which is lawfully obtained by the Supplier from another person entitled to disclose such information.

Contract means the Contract evidenced by the Purchase Order Goods and Services Conditions, the Purchase Order and any other documents to which reference is made in the Purchase Order as forming part of the Contract;

Council means Benalla Rural City Council;

Council Contact means the person named as such in the Purchase Order; or any other person nominated by the Council from time to time in writing;

Delivery Point means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

Goods means the goods to be supplied by the Supplier, as indicated in the Purchase Order;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Information Privacy Principles means the information privacy principles set out in the *Information Privacy Act 2000 (Vic)*.

Intellectual Property means any and all technology and information existing at the date of this Purchase Order which relates to and includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws means the law in force Local, State and the Commonwealth of Australia, including common law and legislation.

Overdue Amount means an amount (or part thereof) that:

- (i) is not, or is no longer, disputed;
- (ii) is due and owing under a tax invoice properly rendered by the Supplier in accordance with these Conditions; and
- (iii) which has been outstanding for more than 30 days from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

Principal means the Benalla Rural City Council;

Purchase Order means the Purchase Order preceding and including these Terms;

Purchase Price means the sum ascertained by multiplying the Unit Price for the applicable Goods by the number of units delivered.

Services means the services to be performed by the Supplier, as indicated in the Purchase Order and includes any matters reasonably to be inferred from the Contract or trade usage; and

Specification means the specifications to which the Goods must comply, as set out in the Purchase Order or as otherwise incorporated in the Agreement.

State means the Crown in the right of the State of Victoria.

Supplier means the party to which the Purchase Order is addressed.

Time for Delivery means the date and, where relevant, the time specified in the Purchase Order (or such other date or time as may be agreed in writing) by or on which delivery of the Goods must be effected by the Supplier.

Unit Price means the price per item of each of the Goods, as specified in the Purchase Order.

3 Interpretation

In the Contract, unless inconsistent with the context:

3.1.1 if the Supplier consists of two or more parties, the Contract shall bind each of them severally and jointly.

4 Completion

The supplier must supply the Goods and/or complete the Services on or before the Delivery Date in accordance with this Purchase Order.

5 Warranties

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

5.1 for Goods -

5.1.1 the Goods will be new, unless agreed otherwise;

5.1.2 the Goods will be fit for the purpose for which items of the same kind are commonly supplied;

5.1.3 the Goods are merchantable quality and free from defects; and

5.1.4 the Supplier is capable of passing title in the Goods free of encumbrances and all other adverse interests at the time they are supplied to the Council.

5.2 for Services -

5.2.1 the Services will be supplied with all due care;

5.2.2 the Supplier has the qualifications, experience and expertise represented to the Council;

5.2.3 the Supplier has no conflict of interest in supplying the Services

5.2.4 the Services will conform to the reasonable requirements of the Council.

Benalla Rural City Council – Purchase Order Goods and Services Conditions

6 Legal Obligations

The Supplier must obey and ensure that its employees, sub-contractors and agents obey any Acts, regulations, local laws and by-laws in any way applicable to the supply of the Goods and/or Services or the Contract.

7 Variation or Termination

7.1 The Council may, at any time, by giving written notice to the Supplier, terminate this Purchase Order and the Supplier must on receipt of such notice immediately cease all work in connection with the supply of the Goods or Services and take all appropriate action to mitigate any loss or prevent any further costs being incurred. In such an event the Council will pay for all Goods supplied and Services performed up to the date of the termination and the reasonable fees and expenses of the Supplier in accordance with the Purchase Order but not any loss of prospective profits. 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.

7.2 The Council may at any time give written notice to the Supplier proposing a variation to the quantity of the Goods. The Supplier 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 goods. The Council may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance this Purchase Order will continue as if no proposal under this sub-clause had been made.

8 Confidentiality

Both the supplier and the Council will not disclose, and will ensure that its employees, agents and sub-contractors do not disclose any information or documents obtained in the course of performing the Services to any third party without the prior written consent of the Principal.

9 Personal Information

9.1 The Supplier agrees with respect to any information held or obtained by the Supplier under or in connection with the Contract:

9.1.1 to use Personal Information only for the purposes of fulfilling its obligations under the Contract;

9.1.2 to comply at all times with the *Privacy Act 1988* (Cth) and the *Privacy and Data Protection Act 2014* (Vic) and all other legislation in force at any time while the Contract is operative relating to the privacy of Personal Information;

9.1.3 at the time of collecting Personal Information, to obtain all necessary consents and authorisations from the persons to whom that Personal Information relates to enable any use of the Personal Information necessary for the performance of the Services; and

9.1.4 to take all reasonable measures to ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure.

9.2 The Supplier indemnifies the Principal in respect of any loss, liability or expense suffered or incurred by the Principal arising out of or in connection with a breach of the obligations of the Supplier under this clause, or any misuse of Personal Information by the Supplier or any of its employees, sub-contractors or agents, or any disclosure by the Supplier or any of its employees, sub-contractors or agents in breach of an obligation of confidence, whether arising under the *Privacy Act 1988* (Cth), the *Privacy and Data Protection Act 2014* (Vic) or otherwise.

10 Rejection of Goods or Services

The Council may reject any of the Goods or Services which do not comply in all respects with this Purchase Order. The Council is not required to make payment for any rejected Goods or Services.

11 Tax Invoices

The Council requires that all suppliers issue a compliant tax invoice for all goods and services supplied. All Tax Invoices must contain the relevant requirements as determined under the A New Tax System (Goods and Services Tax) ('**GST Act**') Act 1999.

All Tax Invoices must include reference to:

- The Suppliers ABN
- The Council's Purchase Order Number
- Delivery docket number
- Quantity
- Price per unit and
- Total Invoice Value.

All Tax Invoices must be sent by email to accounts.payable@benalla.vic.gov.au OR by post to: Accounts Payable, Benalla Rural City Council, PO Box 227, Benalla VIC 3671

12 Payment

12.1 If the Supplier complies with its obligations under the Contract, the Principal must, unless different terms of payment are specified in the Purchase Order, make the payment or payments specified in the Purchase Order within 30 days following receipt of a valid tax invoice for the amount payable. The Principal will not make payment on any tax invoice, unless it specifies the Purchase Order number issued by the Principal. Unless otherwise specified in the Purchase Order, the Supplier must not forward a tax invoice to the Principal until all of the Services have been completed.

12.2 If a payment under clause 12.1 is calculated on a basis which is described as exclusive of GST, the payment must be increased by the applicable amount of GST ("**GST Amount**"). The GST Amount must be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST. The Supplier must provide to the Principal a valid tax invoice prior to the time of, and as a condition of, payment of any GST amount.

12.3 All payments to the Supplier will be made by way of electronic funds transfer. The Supplier, must prior to commencing the supply of the Goods or the provision of the Services, provide details of the Supplier's BSB and bank account to enable payments to be made by this means.

Failure by the supplier to comply with clause 11 may delay payment.

13 Goods and Services Tax ('GST')

The Purchase Price is inclusive of GST. Where the Council is required to pay the Supplier any amount under this Purchase Order on account of GST, the amount representing GST will only be payable by the Council to the Supplier where the supplier supplies to the Council a Tax Invoice (as required by the GST Act).

14 Default by Supplier or the Council

14.1 If the Supplier or the Council defaults in the performance or observance of any obligation it has under this Purchase Order, the non-defaulting party may give notice to the defaulting party specifying the default and requiring that such default be remedied within 14 days.

14.2 If, within 14 days after receipt of the notice, the defaulting party fails to remedy the default, to the satisfaction of the non-defaulting party, the non-defaulting party (without prejudice to any other rights that it may have under this Purchase Order; or at common law) may:

14.2.1 suspend payment or performance (as the case may be) under this Purchase Order; or

14.2.2 terminate this Purchase Order and any other purchase order between the parties.

Benalla Rural City Council – Purchase Order Goods and Services Conditions

15 Insolvency of Supplier

If the Supplier –

15.1 being a person, commits any act of bankruptcy; or

15.2 being a company, commits any act of insolvency

the Council may terminate this Purchase Order immediately.

16 Sub-Contracting and Assignment

Neither party may, except with the written consent of the other, sub-contract or assign the whole or any portion of its rights and obligations under this Purchase Order, and no sub-contractors or assignees will have any rights under this Purchase Order against either party or be entitled to receive any payments under this Purchase Order from the Council. Where a party gives its consent in accordance with this sub-clause, the assigning or subcontracting party remains fully responsible for performance under this Purchase Order.

17 Statutory Requirements

The Supplier and the Council must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations and local laws in any way applicable to the performance of this Purchase Order, including, without limitation, any occupational health and safety legislation.

18 Indemnity

The Supplier indemnifies and holds harmless the 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 Supplier's agents and employees.

The indemnity in this clause is reduced to the extent the loss or liability is caused or contributed to by the Council.

19 Amendment

This Purchase Order may only be varied or replaced by a document duly executed by both parties.

20 Whole Understanding

This Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Goods are to be supplied by the Supplier. If the Supplier's acceptance or supply of this Purchase Order contains any terms in conflict with this Purchase Order, this Purchase Order will have precedence unless otherwise agreed by the Council in writing.

21 Governing Law

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

22 Joint and Several Obligations

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

23 Method of Giving Notices

A notice required or permitted to be given by one party to another under this Purchase Order must be in writing, addressed to the other party and:

23.1 delivered to that party's address; or

23.2 transmitted by facsimile to that party's facsimile number, or

23.3 transmitted by email to that party's specified email address.

24 Receipt of Notices

A notice given to a party in accordance with clause 23 must be treated as having been duly given and received:

24.1 if delivered to a party's address, on the day of delivery; or

24.2 if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received, on the day of transmission.

24.3 if transmitted by email to a party's email address and no failure transmission report is received by either party, on the day of transmission.

25 Occupational Health and Safety

The Principal is obliged to provide and maintain, so far as is practicable, a working environment for its employees and members of the public that is safe and without risk to health.

The Supplier must itself, and must ensure that any sub-contractors of the Supplier, at all times identify and take all necessary precautions for the health and safety of all persons, including the Supplier's employees and sub-contractors, staff of the Principal and members of the public, who may be affected by the performance of the Supplier's obligations under the Contract.

The Supplier must immediately comply with any and all directions by the Principal relating to OH&S.

The Supplier must –

25.1 comply with; and

25.2 ensure that its employees, sub-contractors and agents comply with –

any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the performance of the Supplier's obligations under the Contract.

If the Quotation Form for the Contract required the Supplier to submit details of its OH&S system, the Supplier must prepare an OH&S management plan (including a safe work method statement) for the performance of the Supplier's obligations under the Contract and submit this to the Principal for approval. The Contractor must not commence the performance of the Supplier's obligations under the Contract until the OH&S management plan is approved, in writing, by the Principal.

26 Supply of Goods

26.1 The supplier must supply the Goods specified in the Purchase Order by any date stated in the Purchase Order (or if no date is stated, within a reasonable time) in accordance with this Contract.

26.2 Any Goods must be delivered by the Supplier to the place stated in the Purchase Order and unloaded in accordance with any directions given by the Principal.

26.3 It is a condition of the Principal's purchase of any Goods that:

26.3.1 the Goods will be new, unless otherwise specified in the Purchase Order;

26.3.2 if the Contract states the purpose for which the Goods are required by the Principal, the Goods will be fit for that purpose;

26.3.3 if the Contract does not state the purpose for which the Goods are required by the Principal, the Goods will be fit for the purpose for which items of the same kind are commonly supplied;

26.3.4 the Goods will be merchantable quality; and

26.3.5 the Goods will carry any applicable manufacturer's warranties (which will be passed to the Principal on supply of the Goods).

26.4 Title to the Goods, free of encumbrances and all other adverse interests will pass to the Council upon the Goods coming into the possession of the Principal or its employees or agents. The Supplier warrants that it is able to provide title to the Principal in accordance with this clause.

Benalla Rural City Council – Purchase Order Goods and Services Conditions

26.5 The Supplier must deliver the Goods to the Delivery Point by the time for delivery. Delivery will not be taken to have occurred until delivery is acknowledged in writing by Benalla Rural City Council.

The Unit Price is fixed and includes all packaging, transport, insurance, loading, unloading and storage costs and any other costs incurred by the Supplier.

27 Services

27.1 The Supplier must provide the Services:

27.1.1 by any date stated in the Purchase Order or, if no date is stated, within a reasonable time;

27.1.2 in a diligent manner;

27.1.3 in conformity with all applicable standards issued by Standards Australia and the International Organisation for Standardisation;

27.1.4 in accordance with the principles of quality assurance;

27.1.5 with a level of care, skill, knowledge and judgement in accordance with best industry practice;

27.1.6 in a manner which meets and is fit for the Principal's intended purpose; and

27.1.7 in accordance with the Contract.

27.2 The Supplier will remain responsible for the performance of the Services notwithstanding the acceptance or review of the Services, or any element of the Services, by the Principal or any member of the Principal's staff.

27.3 If the Purchase Order names the persons who are to perform the Services, the Supplier must ensure that the Services are performed by and only by the named persons.

28 Intellectual Property Rights

The Supplier grants to the Principal a non-exclusive, perpetual, royalty-free licence to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow the Principal the full use and enjoyment of those Goods and the Supplier must, upon request by the Principal, do all things as may be necessary (including executing any documents) to give full effect to such rights.

29 Insurances

34.1 The Supplier must, at all times while performing the Services, be the holder of:

34.1.1 a current public liability policy of insurance in the name of the Supplier providing coverage for an amount per event of at least \$10,000,000; and

34.1.2 a WorkCover policy of insurance with respect to all of its employees.