

These terms and conditions apply to any Purchase Order (*Order*) for the supply of Good or Services issued by Port Stephens council (*Council*) and must be read in conjunction with any applicable Contract.

Definitions

Contract means the contract for the purchase of the Goods and/or Services referred to in the order.

Normally means unless otherwise agreed or stated in the Order, Contract or Offer.

Offer means an offer to quote from a Supplier to supply Goods and/or Services that has been accepted by *Council*.

Price means the total amount set out in the Order for the Goods and/or Services.

PPSA means the Personal Property Securities Act 2009 (Cth).

1. General

- a) These terms and conditions apply to any Purchase Order (*Order*) for the supply of Goods or Services issued by Port Stephens Council (*Council*) and must be read in conjunction with any applicable Contract.
- b) If the *Contract* includes terms and conditions that are inconsistent with these terms and conditions, the contract prevails to the extent of the inconsistency.
- c) The Supplier's standard terms and conditions do not apply to this *Order* unless expressly agreed in writing by Council.

2. Deliver – Goods

- a) The Supplier must provide the Goods in accordance with the *Order, Contract and Offer* and meet any requirements, standards and timeframes specified in the *Order, Contract or Offer*.
- b) *Normally*, the Supplier must arrange for the Goods to be suitably packed and delivered Free into Store (FIS) and unloaded.
- c) *Normally*, the Goods must be new and unused.
- d) The Goods must meet all laws and Australian Standards applicable to the Goods.

3. Delivery – Services

- a) The Supplier must provide the Services as specified in the *Order, contract or Offer* and meet any requirements and standards specified in the *Order, Contract and Offer*.
- b) The Supplier must commence and complete the services within the dates or timeframes specified in the Order, Contract or Offer, or within a reasonable time if there are no date(s) specified.
- c) The services must be provided with the care and skill and technical knowledge that would be expected of an experienced, professional supplier of similar services and the Supplier must take all necessary steps to avoid loss and damage.
- d) The services must be provided safely and comply with all laws applicable to the Services including work health and safety laws and *Council's* reasonable directions relating to work health and safety.
- e) The Supplier must not subcontract any of the Services unless *Council* first agrees in writing. All subcontractors must effect the insurances specified in **clause 11**, as applicable for their portion of the work.
- f) Insurances must be in place before the Services are first delivered.

4. Payments and Invoicing

- a) Normally Council must pay the Price within 30 Days after receiving the Supplier's invoice, provided that:
 - i. the Goods and/or Services have been accepted by *Council*; and
 - ii. the Supplier's invoice is a valid tax invoice (if the Supplier is required to be registered for GST) and quotes the *Order* number supplied by *Council*, ABN and name of the Supplier.

The Supplier acknowledges that payment of the Price by *Council* may be refused or delayed if the Supplier fails to comply strictly with these obligations, which it acknowledges are integral to the purchasing and probity processes of *Council*.

- b) Payment will be made by electronic funds transfer to the bank account nominated by the Supplier.

- c) *Normally*:

- i. the *Price* includes GST
- ii. *Council* will pay no more than the Price and the Supplier has no right to claim a variation for any reason.

5. Ownership and Risk

- a) Title in the Goods and/or Services will pass to *Council* on delivery.
- b) The Supplier assumes all risk in the Goods and/or Services until they are accepted by *Council*.

6. Warranties

- a) In addition to the warranties under the Australian Consumer Law and warranties implied by law, the Supplier warrants to *Council* that:

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- i. the Goods and/or Services are of acceptable quality and free from defects in materials and workmanship
 - ii. the Goods and/or Services are fit for purpose and/or give the results requested or agreed by *Council* in the *Order*, *Contract* or *Offer*
 - iii. it has a right to provide the Goods and/or Services and that the Goods and/or Services do not infringe the intellectual property or moral rights of any person
 - iv. the Goods and/or Services come with full title and ownership and are free from any security interest
 - v. the Goods and/or Services match descriptions made by the Supplier on packaging and labels, or in promotions or advertising
 - vi. the Goods are manufactured in the factory or place of origin and match the model number or brand, if specified in the *Order*, *Contract* or *Offer*, and match any demonstration model or sample provided to Council; and
 - vii. if applicable, it has spare parts and repair facilities available for a reasonable time after purchase or completion unless *Council* was informed otherwise.
- b) The Supplier must provide *Council* with all relevant manufacture's and third party warranties in respect of the Goods.

7. Delivery and Acceptance

- a) *Normally*, *Council* may within 14 days after the delivery of all or part of the Goods and/or Services, reject the Goods and/or Services if the Goods and/or Services are defective, or do not comply with the requirements of **clauses 2 or 3** or the warranties in **clause 6**. *Normally*, if *Council* does not notify the Supplier of rejection within the 14 day period, *Council* is deemed to have accepted the Goods and/or Services.
- b) *Council* may, at any time after acceptance of all or part of the Goods and/or Services, reject the Goods and/or Services if the Goods and/or Services are defective, or do not comply with the requirements of **clauses 2 or 3** or the warranties in **clause 6**, provided that the defect could not have been discovered, using reasonable endeavors, prior to acceptance.
- c) If *Council* rejects all or part of the Goods and/or Services, the Supplier must comply with a requirement of *Council* to:
 - i. collect the defective Goods and/or Services and replace them, at the Supplier's expense; or
 - ii. repair or rectify any defects in the Goods and/or Services, at the Supplier's expense; or
 - iii. refund to *Council* any amount paid for the defective Goods and/or Services, including freight costs.

8. Variation or Cancellation for Convenience

- a) *Council* may at any time before delivery of the Goods and/or Services, vary the *Order* by giving a notice to the Supplier. The parties will endeavor to agree to any reasonable adjustment to the *Price* or delivery timeframe. The Supplier may terminate the *Order* if it will be unable to provide the Goods and/or Services as specified in the variation notice or if adjustments to the *Price* or delivery timeframe cannot be agreed.
- b) *Council* may at any time before delivery of all or part of the Goods and/or Services, cancel the whole or part of the *Order* by giving notice to the Supplier.
- c) If the *Order* is terminated or cancelled under this clause, *Council* is liable to pay for Goods and/or Services supplied in accordance with the *Order* up to the date of cancellation, and for the Supplier's reasonable and substantiated costs of materials and other items ordering in connection with the Goods and/or Services for which the Supplier is legally bound to pay. If applicable, title to and property in those materials and other items will pass to *Council* on payment. Under no circumstances will the total of all payments to the Supplier under this clause exceed the *Price*.
- d) The Supplier must mitigate all loss and expenses in connection with the cancellation, variation or termination of the *Order* and is not entitled to loss or profit.

9. Termination for Cause

Council may terminate the *Order* without penalty if:

- a. The Supplier fails to deliver the Goods and/or Services as specified in the *Order* or the Supplier notifies *Council* that the Supplier will be unable to deliver the Goods and/or Services as specified in the *Order*, or
- b. The Supplier fails to remedy a breach of the *Order*, *Contract* or *Offer* (including a breach of any warranties) within 5 business days of receiving written notice of the breach.

10. Liability and Indemnity

- a. The Supplier is liable for and indemnifies *Council* in respect of any claim for loss or damage to any property or death or injury to any person (*Loss*) due to or arising out of the provision of the Goods and/or Services or the Supplier's act, omission, negligence or breach of the *Order*, *Contract* or *Offer*. This indemnity does not apply to the extent that the *Loss* arises from *Council's* default or negligence.
- b. Neither party is liable to the other for consequential or indirect loss or for loss of profit arising out of or in connection with the *Order*.

11. Insurance

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The Supplier must maintain adequate insurances for the *Order* and provide *Council* with proof or request. *Normally*, the Supplier must hold the following insurances:

- a. Public Liability: \$20 million per occurrence
- b. For Goods: loss or damage to Goods (including loss or damage in transit) and \$20 million product liability per occurrence.
- c. For Services, as applicable: Contract Works Insurance (Price plus 20%); Professional indemnity insurance (\$10 million per occurrence); Workers compensation (as required by law) or, if the Supplier has no employees, personal accident and illness insurance.
- d. Comprehensive motor vehicle insurance is also required for any vehicles used to provide the Goods and/or Services.

12. Intellectual Property

- a. Normally, ownership of all intellectual property in any deliverables created under this *Order* vests in *Council*, including designs, drawings and reports. Any intellectual property in any property owned by the Supplier or other person prior to the date of this *Order* will not vest in Council.
- b. The Supplier grants a non-exclusive fee free licence to Council to allow Council use of the Goods and/or Services. The Supplier warrants that it owns all intellectual property rights necessary to grant this licence.

13. Personal Property Securities Act 2009 (Cth)

The Supplier acknowledges and agrees that these Terms and any Invoice under these Terms:

- a) Constitute a security agreement for the purposes of the *PPSA*; and
- b) Create a Security Interest in:
 - i. all Goods and/or Services previously supplied by the Supplier to *Council* (if any); and
 - ii. all Goods and/or Services that will be supplied in the future by the Supplier to *Council*.

And agrees to be bound by the terms of the *PPSA Act* in its conduct with *Council*.

14. Modern Slavery

- a) The Supplier is expected to make all reasonable efforts to ensure that its operation and businesses within its supply chain are not engaged in, or complicit with, human rights abuses, such as forced or child labour or any other form of modern slavery.
- b) If the Supplier becomes aware of the presence of modern slavery in its operations or supply chain, they must report this to *Council* as soon as possible at modernslavery@portstephens.nsw.gov.au Reporting should outline details of the human rights violation discovered and what remedial and preventive measures are occurring, in line with GRS documents which can be found here [here](#).

15. Privacy and Data Breaches

- a) In providing the Goods and /or services , the Supplier must comply with, and ensure that its officers, employees, agents and sub-contractors comply with the provisions of the Privacy and Personal Information Protection Act 1998 (NSW), (PPIP Act) and not do anything ,which if done by the Customer would breach the PPIP Act. The Supplier will notify the Customer, if it becomes aware that it may be required to disclose Personal Information by law or to the Privacy Commissioner within 5 working days.
- b) If the Supplier becomes aware that there are reasonable grounds to suspect that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the Contractor within its provision of the service, the Supplier agrees to:
 - i. notify the Customer in writing as soon as possible, which must not be later than 3 days; and
 - ii. unless otherwise directed by the Customer, carry out an assessment in accordance with the PPIP Act.
- c) Where the Supplier is aware that there are reasonable grounds to believe there has been, or where the Customer notifies the Supplier that there has been, an Eligible Data Breach in relation to any personal information held by the Supplier as a result of the contractor within its provision of the Service, the Supplier will:
 - i. take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any of the individuals to whom it relates;
 - ii. unless otherwise directed by the Customer, take all other action necessary to comply with the requirements of the PPIP Act1998(NSW).
 - iii. take any other action reasonably directed by the Customer.
 - iv. inform the customer of any outcomes pertaining to the assessment carried out by the supplier within 3 days of the assessment.
 - v. liaise with the Information and Privacy Commissioner to ensure mandatory reporting requirements are met.
- d) The Supplier must ensure that any subcontract entered into by the Supplier for the purpose of fulfilling the Supplier's obligations under the contract imposes on the Subcontractor the same obligations regarding privacy and notifiable data breaches that the Supplier has under the Contract.
- e) The Supplier will notify the Customer as soon as reasonably practicable if it becomes aware of a breach or possible breach of the obligations contained in the clause.

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16. General

- a) The Supplier must not assign the benefit of the *Order* without *Council's* prior written approval.
- b) No variation of the *Order* will be binding on *Council* unless first agreed to in writing by *Council*.
- c) *Council's* failure or delay to enforce a condition, or to exercise a right or remedy for breach, is not a waiver of that condition or any other breach.
- d) *Council* may also include with these Purchase Order Terms and Conditions of contract Special Conditions of Contract covering issues such as Safety Management, Insurances, Dispute Resolution, GIPA requirements etc. as and when required.
- e) These Purchase Order Terms and Conditions are subject to laws of New South Wales and the parties submit to the jurisdiction of Courts and tribunals in the State.
- f) The Supplier must comply with all relevant laws and the requirement of any relevant statutory authority in supplying the Goods and/or Services.
- g) Under the Heavy Vehicle National Law Chain of Responsibility (CoR) provisions, every person in the transport supply chain has a responsibility to ensure the safe and legal transport of goods. This places legal obligations on all parties who operate in the supply chain.

Council operates within the CoR framework and the Supplier agrees to ensure that all relevant aspects of CoR are considered in the supply and delivery of goods.

In addition to any statutory provisions relating to the health, safety and welfare of employees (including but not limited to work, health and safety laws) the Supplier agrees to have a pro-active and systems management approach to WHS and rehabilitation matters.

- h) Where required, the Supplier is to register and maintain approval in Council's Contractor Management System, which manages the Service Provider's business information, insurances, Work Health and Safety (WHS) and employee information.