

Trade terms

These trade terms apply to every supply of goods or services to the Council which has been ordered using a Purchase Order, unless there is another written contract in place for that supply. These trade terms apply subject to any additional terms attached to the Purchase Order.

1. ACCEPTING AN ORDER

- 1.1** If the Council sends a Supplier a Purchase Order, the Supplier can accept that Purchase Order by sending a written notice that it accepts to the Council (see clause 17 below on written notices) or by supplying the Goods or Services requested.
- 1.2** If a Purchase Order is not accepted within 10 Working Days of the date shown on it, it will expire and can no longer be accepted by the Supplier.
- 1.3** When a Supplier accepts a Purchase Order, the Goods or Services will be provided under these Trade Terms, and both the Council and the Supplier will be bound by them.
- 1.4** If a Supplier wants to negotiate different terms, it must do so before accepting the Purchase Order.
- 1.5** A notification to the Council that a Supplier accepts a Purchase Order subject to additional or amended terms is not a valid acceptance.
- 1.6** The Council will not be bound by additional or amended terms unless it has agreed to them in writing, and may accept a supply of Goods or Services without being bound by any additional or amended terms it has been notified of but not agreed to in writing.

2. SUPPLY OF GOODS

- 2.1** All Goods must be supplied with a packing slip showing the Purchase Order Number.
- 2.2** The Council has no obligation to accept any Goods delivered without a packing slip showing the Purchase Order Number.
- 2.3** All Goods must be supplied on the date provided for in the Purchase Order, or if no date is specified or otherwise agreed, promptly after the Supplier receives the Purchase Order.
- 2.4** The Supplier must make sure all Goods are properly packaged so that they are in good condition when they are delivered to the Council.
- 2.5** Where practicable (but without compromising the Supplier's obligation under clause 2.4), all Goods should be packaged in recyclable packaging.
- 2.6** All Goods should be delivered to the location specified in the Purchase Order, and if no location is specified, the Supplier is responsible for finding out which location to deliver to.
- 2.7** Risk in any Goods, and ownership of them, will pass from the Supplier to the Council at the time that the Council accepts delivery of them.
- 2.8** If the Council wishes to test or inspect any Goods before accepting delivery, the Supplier will provide any assistance with that testing or inspection which is reasonably requested by the Council.
- 2.9** The Council has no obligation to accept any Goods which it believes, on reasonable grounds, do not meet the requirements of this Agreement including, without limitation, the warranties set out in clause 3.
- 2.10** If the Council is entitled to accept any Goods, and refuses to accept them, it may return the Goods to the Supplier or hold them until the Supplier collects them. All

costs incurred by the Council in relation to the return or holding of those Goods must be met by the Supplier.

- 2.11** The Council accepts Goods supplied to it when it begins using them or notifies the Supplier of its acceptance or (if the Goods were supplied with a Purchase Order Number) if it has taken delivery without indicating any conditions to acceptance.
- 2.12** Acceptance by the Council does not mean that the Council acknowledges or agrees that the Goods meet the requirements of clause 3, even if such acceptance follows acceptance testing.

3. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

- 3.1** The Supplier represents and warrants that all Goods supplied by the Supplier:
- (a) are new and unused (unless otherwise agreed by the Council);
 - (b) are of merchantable quality, and free of any defects in materials and workmanship;
 - (c) are fit for any purpose which they could reasonably be expected to be used for, including any purpose which the Council told the Supplier it intended to use them for at or prior to the time it delivered the Purchase Order;
 - (d) comply with any requirements and specifications which the Council provided to the Supplier at or before the time when it placed its order or otherwise agreed with the Supplier;
 - (e) comply with all applicable legislative and regulatory requirements, and all applicable industry standards;
 - (f) match any descriptions of them published by or on behalf of the manufacturer or the Supplier;
 - (g) are able to be lawfully sold by the Supplier to the Council and that the Council will, on acceptance, receive good title to them, free from any security interest, lien or other encumbrance.
- 3.2** The Supplier represents and warrants that all Services performed by the Supplier:
- (a) will be carried out with all reasonable care, skill and diligence;
 - (b) will be carried out at the time specified in the relevant Purchase Order, or if no time is specified, will be carried out promptly;
 - (c) will be carried out by an appropriate number of people with an appropriate level of experience, qualification and supervision;
 - (d) will be carried out in accordance with all applicable legislative and regulatory requirements, and all applicable industry codes of conduct.
- 3.3** This clause is not intended to limit any other legal obligations of the Supplier.

4. PRICE AND PAYMENTS

- 4.1** The Supplier will supply the Goods or Services at the prices set out in the relevant Purchase Order or as otherwise agreed in writing.
- 4.2** The Supplier agrees that the prices set out in the Purchase Order or otherwise agreed in writing are the

total amount payable by the Council (excluding GST), and that they include all costs.

4.3 The Council will pay any valid invoice by the 20th day of the month following the month in which the relevant Goods or Services were supplied, unless the invoice is received after the 5th Working Day of that following month. If it is received after the 5th Working Day of that following month it will be paid by the 20th day of the first month in which it has been received by the 5th Working Day.

4.4 To be valid, an invoice must, without limitation:

- (a) include the right price;
- (b) quote the Purchase Order Number;
- (c) comply with any relevant standards required by the Inland Revenue Department;
- (d) show a breakdown of all labour, materials and any mileage (if applicable).

4.5 Invoices should be sent to the address shown on the Purchase Order. If an invoice is not sent to the right address, it will not be considered to have been delivered for the purposes of clause 4.3 until it has been received by the person responsible for processing it.

5. INTELLECTUAL PROPERTY

5.1 The Council agrees that all Intellectual Property of the Supplier and its licensors that is not developed, commissioned or created under or in connection with this Agreement, but is used for the purposes of this Agreement together with all updates, modifications, adaptations and/or additions made to that Intellectual Property whether under this Agreement or otherwise, will be owned exclusively by the Supplier or the relevant licensors.

5.2 All Intellectual Property of the Council and its licensors that is not developed, commissioned or created under this Agreement, but is used for the purposes of this Agreement, together with all updates, modifications, adaptations and/or additions made to that Intellectual Property whether under this Agreement or otherwise, will be owned exclusively by the Council or the relevant licensors.

5.3 All new Intellectual Property that is developed, commissioned or created under this Agreement will be owned exclusively by the Council upon creation.

5.4 The Supplier must ensure that the Council has all the necessary rights (and documentation) to fully enjoy the full benefits of the Goods or Services.

5.5 The Supplier warrants to the Council that ownership (where intended), possession, use, modification or resale by the Council of any Goods supplied will not infringe any third party's rights.

6. INDEMNITY

6.1 The Supplier shall at all times indemnify the Council in respect of any loss, damage or expense suffered or incurred by the Council (including legal fees on a solicitor and own client basis) 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.

6.2 The indemnity shall survive the termination of this Agreement.

7. INSURANCE

7.1 While supplying any Goods or Services, the Supplier is to maintain, at the Supplier's cost, Public Liability Insurance for a minimum value of \$2,000,000.

7.2 While supplying any professional services, the Supplier is to maintain, at the Supplier's cost, Professional Indemnity Insurance for a minimum value of \$1,000,000.

7.3 While undertaking any work on Council property, the Supplier is to maintain, at the Supplier's cost, the following insurance also:

- (a) Contractors All Risk insurance policy to a minimum value of the construction contract, plus professional fees, escalation and demolition (if appropriate);
- (b) Motor vehicle third party liability to a minimum value of \$2,000,000.

7.4 The Supplier must have the Supplier's insurer complete the Council's standard insurance certificates for the specified insurances if required by the Council and ensure that the benefit of such insurance is available to the Council for any loss, damage, expense, or third party claim.

7.5 The Supplier shall diligently pursue any insurance claims for the full amount of the Council's loss or damage.

7.6 The Council may, acting reasonably on request, agree in writing to the requirements of this clause 7 being modified to take account of the nature of the Supplier's engagement.

8. THIRD PARTY WARRANTIES

The Supplier will, to the extent possible, pass on to the Council the benefit of any warranty or guarantee received from any other person in respect of Goods supplied, so that the Council may have recourse against those persons.

9. PUBLICITY

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

10. CONFIDENTIALITY

10.1 Both the Council and the Supplier will keep confidential and secure, and not misuse, any information of the other party that could reasonably be expected to be proprietary, commercially sensitive or confidential.

10.2 Disclosure and use of information by either party is allowed to the extent required by law, to the extent necessary to perform its obligations under this Agreement, and to the extent that such information is already in the public domain or was received from an independent source.

10.3 The Supplier will stop using and return to the Council, or destroy if so directed by the Council, any Council property and information as requested by the Council.

10.4 The Supplier acknowledges that the Council's obligations under this clause are subject to its legal obligations of disclosure as a public body.

11. ENVIRONMENTAL

The Supplier will not allow any unauthorised activity, nuisance, discharge or any contaminant, or making of excessive noise at relevant properties of the Council.

12. HEALTH & SAFETY

The Supplier must comply when on any site of the Council's with the Health and Safety in Employment Act

1992 and all other regulatory provisions relating to the provision of the Goods or Services, and they must have in place and comply with a health and safety management plan.

13. ASSIGNMENT AND SUBCONTRACTING

13.1 The Supplier may not assign or otherwise transfer any of its rights, benefits or obligations under this Agreement without the prior written consent of the Council. The assignment or transfer of shares in, or restructuring of the Supplier so that the effective management or control of the Supplier passes to persons other than those holding it at the date of this Agreement, will be treated as an assignment or transfer for the purposes of this clause.

13.2 The Supplier must not sub-contract or otherwise arrange for any person to perform the Supplier's obligations under this Agreement without the prior written consent of the Council. No subcontracting (whether consented to or not) will relieve the Supplier of its obligations under this Agreement.

13.3 The Council may assign the benefit of its interest under this Agreement to any person.

14. CLAIMS AGAINST THE COUNCIL

14.1 In no event will the Council be liable for any consequential loss, damage or expense including any loss of profit.

14.2 Any claim against the Council must be made in writing and delivered within 3 months of the event to which it relates, and no claim shall exceed the value of the Goods or Services provided under the Purchase Order to which it is connected.

15. DEFAULT

15.1 Without limiting any other rights or remedies which the Council has, the Council may, by notice in writing, terminate this Agreement with immediate effect if:

- (a) the Supplier materially breaches the terms of this Agreement and does not remedy that breach within 10 Working Days of being notified of the breach by the Council;
- (b) the Supplier goes into liquidation, has a receiver, administrator or statutory manager appointed in respect of itself or any material part of its assets, becomes unable to pay its debts as they fall due, is presumed under section 287 of the Companies Act 1993 to be unable to pay its debts, is removed from the New Zealand Companies Register, or any event analogous in nature occurs in respect of the Supplier.

15.2 If the Supplier breaches any of its warranties or undertakings under clause 3, the Council may withhold payment of any amounts due under this Agreement in respect of the Goods or Services to which the breached warranty or undertaking relates until the relevant breach has been remedied. If the breach is not able to be remedied, the Council may permanently withhold an amount equal to the loss which it reasonably calculates it has suffered as a result of the breach.

15.3 If the Council disputes any part of an invoice submitted by the Supplier, the Council may withhold payment of that invoice without penalty until the dispute is resolved. The Council must promptly inform the Supplier of any such withholding, and explain the reasons for such withholding.

16. RELATIONSHIP

16.1 The Council and the Supplier/Contractor will act in good faith towards one another and do all things reasonably

required to ensure that the full benefit of this agreement and the relationship between the parties is realised.

16.2 Nothing in this Agreement should be interpreted as constituting either the Council or the Supplier as an agent, partner or employee of the other, and neither party shall represent to any other person that such a relationship exists.

16.3 The Council's relationship with the Supplier is not exclusive.

17. NOTICES

17.1 Any notice to be given under this Agreement must be in writing and must be delivered or sent by post or facsimile to the named business unit at the address specified in the Purchase Order, or if to the Supplier, to its registered office, or if the Supplier has no registered office, to its usual address.

17.2 Any party to whom a notice is delivered will be deemed to have received the notice:

- (a) if sent by post, 2 Working Days after it was posted;
- (b) if sent by facsimile, upon its receipt as to which a confirmation slip or other confirmation of transmission automatically produced by the sender's facsimile machine will be adequate proof of receipt;
- (c) if delivered by hand, on delivery.

18. DEFINITIONS AND INTERPRETATION

18.1 The following capitalised terms used in this Agreement bear the following meanings:

Agreement means the contract entered into in accordance with clause 1, which consists of the terms of a Purchase Order, these Trade Terms and any other terms agreed in writing.

Council means Wellington City Council.

Goods means the goods, materials or substances specified in the relevant Purchase Order and all parts or components of those Goods to be supplied by the Supplier to the Council.

GST means goods and services tax payable under the Goods and Services Tax Act 1985, at the rate prevailing at the time of supply.

Intellectual Property means all intellectual property and proprietary rights, including patents, trade marks, service marks, copyright, design rights, formulae, methods (including business methods), characteristics, equipment designs, technology, inventions (whether patentable or not), discoveries, know-how, experience, trade secrets and confidential information (and whether registered or unregistered).

Purchase Order means a purchase order delivered by the Council to a prospective supplier of Goods or Services which refers to these Trade Terms.

Purchase Order Number means the number set out in the top right hand corner of the relevant Purchase Order.

Services means the services specified in the relevant Service Order to be provided or performed by the Supplier.

Trade Terms means the terms and conditions of supply set out in this document.

Working Day means any day other than a Saturday, Sunday or Public Holiday (as that term is defined in the Holidays Act 2003) in Wellington.

18.2 This Agreement is governed by New Zealand law.