

Purchase Order Terms & Conditions

1. DEFINITIONS

Unless the context otherwise requires:

Company means City of Gosnells ABN 18 374 412 891 located 2120 Albany Highway, Gosnells WA 6110

Contractor means the contractor, consultant or supplier specified in the purchase order form.

Confidential Information means the terms of this Purchase Order and any information concerning the business, operations, finances, plans or customers of the Company which is disclosed to or acquired by the Contractor, but does not include information which:

- (a) is or becomes public knowledge other than through a breach of this Purchase Order; or
- (b) has been independently developed or acquired by the Contractor.

Delivery Point means the delivery point specified in the purchase order form.

Goods means any goods to be supplied by the Contractor pursuant to this Purchase Order.

GST has the meaning given in the GST Act.

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

IP Rights means all intellectual property rights, including rights in respect of or in connection with any confidential information, copyright, moral rights, inventions, trademarks, service marks, designs, semiconductors, circuit layouts and performance protection and includes any right to apply for the registration or renewal of such rights.

Price means the price specified in the purchase order form as the 'Unit Price' or 'Total (excluding GST)', as the context requires.

Purchase Order means the agreement between the Company and the Contractor comprising:

- (a) these terms and conditions;
- (b) the purchase order form to which these terms and conditions are attached; and
- (c) any attachments, schedules or annexure referred to in the purchase order form or terms and conditions.

Services means any services to be performed by the Contractor pursuant to this Purchase Order.

Site means any land or building that the Company makes available to the Contractor for the purpose of performing its obligations under this Purchase Order.

Supply has the meaning given in the GST Act.

Tax Invoice has the same meaning as in the GST Act.

2. INTERPRETATION

Unless the context otherwise requires:

- (a) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (d) all monetary amounts are in Australian dollars; and
- (e) no rule of construction applies to the disadvantage of the party on the basis that the party put forward this Purchase Order or any part of it.

3. SUPPLY OF GOODS AND SERVICES

The Contractor must supply the Goods and provide the Services to the Company in accordance with this Purchase Order.

4. TIME FOR PERFORMANCE

The parties agree that time is of the essence in the delivery of the Goods and the performance of the Services.

5. ACCEPTANCE OF THIS PURCHASE ORDER

In the absence of written confirmation, the delivery of any Goods or performance of any Service will constitute acceptance by the Contractor of all terms and conditions in this Purchase Order.

6. CONTRACTOR'S OBLIGATIONS ON DELIVERY OR PERFORMANCE

The Contractor must, in delivering the Goods or performing the Services:

- (a) not interfere with the Company's activities;
- (b) be aware of and comply with, and ensure that the Contractor's personnel are aware of and comply with:
 - (i) all applicable laws and industrial awards;
 - (ii) the Company's Contractor Safety Requirements Manual and any other standards or procedures notified to the Contractor by the Company; and
 - (iii) all lawful directions and orders given by the Company or its personnel;
- (c) ensure that the Contractor's personnel entering the Site perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
 - (i) safe working practices;
 - (ii) care of property; and
 - (iii) continuity of work;
- (d) leave the Site secure, clean, orderly and fit for immediate use having regard to the condition of the Site immediately prior to the delivery of Goods or the performance of Services;
- (e) cooperate with any other contractor engaged by the Company;
- (f) access the Site only through access points designated by the Company;
- (g) not interfere with the occupation of land adjacent to the Site, or normal access to, from or within that land by third parties;
- (h) not bring onto or use on the Site any dangerous substances or carry out any dangerous activities on Site, without first obtaining the Company's consent;
- (i) advise the Company of any special equipment the Contractor will use on the Site, such as cutting or drilling equipment;
- (j) take all proper precautions when using dangerous substances or special equipment or carrying out dangerous activities;
- (k) use its best endeavours to minimise nuisance or disturbance to any user of the Site or any user of any neighbouring site;
- (l) coordinate the timing of its activities with the Company; and
- (m) comply with all directions given by the Company relating to the Site or activities carried out on the Site.

7. CONDITIONS AS TO QUALITY OF SERVICES

The Contractor must ensure that:

- (a) the Services match the description of the Services in this Purchase Order;
- (b) if the Contractor provided the Company with a demonstration of the Services before the Company issued this Purchase Order, the Services correspond in nature and quality with the Services demonstrated;
- (c) if the Contractor showed the Company a result achieved by the Services before the Company issued this Purchase Order, the Services correspond in nature and quality with the services that achieved that result;
- (d) the Services are performed by appropriately qualified and trained Contractor personnel, and with due care and skill; and
- (e) the Services are fit for the purposes for which those type of Services are commonly bought and for any other purpose described in this Purchase Order.

8. CONDITIONS AS TO QUALITY OF GOODS

The Contractor must ensure that:

- (a) the Goods match the description of the Goods in this Purchase Order;
- (b) if the Contractor gave the Company a sample of the Goods before the Company issued this Purchase Order, the Goods correspond to the sample;
- (c) the Goods comply with any relevant standard of Standards Australia Limited and any other standards specified in this Purchase Order;
- (d) the Goods are fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose described in this Purchase Order;
- (e) the Goods are new and of merchantable quality; and
- (f) the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on the Company's behalf if the Company requests).

9. PACKAGING OF GOODS

The Contractor must:

- (a) suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage having regard to the transport and climatic conditions through which the Goods will pass during transport;
- (b) pack and transport the Goods in accordance with applicable regulations and industry codes;
- (c) clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with this Purchase Order number and ensure that the delivery documents accompany the Goods to the Delivery Point;
- (d) include a packing list in each package of Goods for delivery; and
- (e) assist the Company in obtaining documents and other information required for the resolution of any transport dispute.

10. LABOUR PLANT AND EQUIPMENT

- (a) Unless this Purchase Order provides otherwise, the Contractor must supply, at its own expense, all labour, plant, equipment, tools, appliances or other property and items the Contractor requires to fulfil its obligations under this Purchase Order.
- (b) Any plant, equipment, tools, appliances or other property and items that the Company provides to the Contractor to enable it to complete this Purchase Order remain the Company's property and must only be used for the purposes of fulfilling the Contractor's obligations under this Purchase Order.
- (c) The Contractor must keep the Company's property in good order and condition.

11. DEFECTS

- (a) If the Goods do not meet the requirements of this Purchase Order, the Company may, at its discretion, reject the Goods, or require the Contractor to repair the Goods at no additional cost to the Company.
- (b) If the Services do not meet the requirements of this Purchase Order, the Company may, at its discretion:
 - (i) require the Contractor to re-perform the Services at no additional cost to the Company; or
 - (ii) procure another person to carry out those Services, the cost of which will be a debt due by the Contractor to the Company.

12. PRICE

Unless this Purchase Order provides otherwise, the Price is inclusive of:

- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Purchase Order;
- (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in conjunction with the Services; and
- (c) the Contractor's compliance with its obligations under this Purchase Order.

13. INVOICING

- (a) The Contractor must, as a precondition for payment, submit within 30 days of delivery of the Goods or performance of the Services:
 - (i) a Tax Invoice, which contains sufficient information for the Company to determine if the Goods and Services have been provided; and
 - (ii) (if applicable) copies of tax invoices issued to third parties, which contain sufficient information for the Company to determine if the Goods and Services have been provided.
- (b) Tax Invoices must show the purchase order number and be sent:
 - (i) by email to AP@gosnells.wa.gov.au; or
 - (ii) by mail, to:
 - Accounts Payable
 - City of Gosnells
 - PO Box 662
 - Gosnells WA 6990.
- (c) If the Company disputes any item or items in the Tax Invoice, the Company shall:
 - (i) notify the Contractor specifying the reasons for the dispute;
 - (ii) withhold payment of the disputed item or items until settlement of the dispute; and
 - (iii) pay the undisputed portion of the Tax Invoice in accordance with clause 14.
- (d) For a period of 12 months after payment of a Tax Invoice pursuant to this Purchase Order, the Company shall have the right to query any Tax Invoice presented by the Contractor and to require correction of any error notwithstanding that the Tax Invoice may relate to a payment which the Company has already made.
- (e) Where the Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, the Company may audit the Contractor's records to determine if the Price has been correctly calculated. This right continues for 12 months after submission of any Tax Invoice.

14. PAYMENT

Unless this Purchase Order otherwise provides:

- (a) the Contractor will be paid in one lump sum on completion of its obligations under this Purchase Order;

- (b) subject to clauses 13.(c) and 14.(a), the Company will pay the Contractor within 30 days of the end of the month in which the Contractor submits a valid Tax Invoice and sufficient supporting information; and
- (c) without limiting the Contractor's rights under any other provision of this Purchase Order or generally, all monies due to the Company by the Contractor and all losses, costs, charges, damages or expenses which the Company may have incurred or paid and for which the Contractor is liable, may be deducted by the Company from any amount due under this Purchase Order to the Contractor.

15. VARIATION

- (a) The Company may at any time vary this Purchase Order by written notice to the Contractor.
- (b) Within 7 days of receipt of a notice issued pursuant to paragraph (a), the Contractor must advise the Company of any change in Price arising from the variation, which change must be based on agreed rates (if any) or reasonable rates and prices in the market at that time.

16. CANCELLATION OF THIS PURCHASE ORDER

The Company may cancel the whole or any part of this Purchase Order at any time, but:

- (a) the Company must pay for any part of the Goods delivered or Services performed prior to the cancellation;
- (b) if the Contractor has shipped any Goods before cancellation but the Goods have not been delivered to the Delivery Point at the time of cancellation, the Company must either:
 - (i) accept those Goods when delivered and pay for them; or
 - (ii) return the Goods to the Contractor at the Company's expense;
- (c) if the Contractor has not shipped the Goods at the time of cancellation, on receiving the written notice of cancellation the Contractor must stop manufacture of the Goods, and do everything possible to mitigate any costs incurred in relation to the Goods; and
- (d) if clause 16.(b)(ii) or 16.(c) applies:
 - (i) to the extent the Goods were manufactured or fabricated in accordance with Company specifications, the Company must reimburse the Contractor in respect of expenditure reasonably incurred by the Contractor prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Contractor is not able to recoup in some other way; and
 - (ii) the Contractor is not entitled to be paid for those Goods or Services, or to any compensation for the cancellation other than as specified in clause 16.(d)(i).

17. TITLE AND RISK IN GOODS

- (a) The Company does not have title to any Goods until the Company pays for those Goods.
- (b) The Company does not bear risk in any Goods until the Company takes delivery of those Goods at the Delivery Point.
- (c) The Contractor warrants that:
 - (i) it has complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to the Company on that basis; and
 - (ii) the Company will be entitled to clear, complete and quiet possession of the Goods.

18. INSURANCE

- (a) The Contractor must procure and maintain the following minimum insurances with a reputable insurer and on terms approved by the Company, which approval must not be unreasonably withheld:

- (i) public liability insurance for not less than A\$20,000,000 for any one occurrence for liability to any third party arising out of the performance of this Purchase Order (including the provision of Goods and Services) and which covers:
 - (A) the Company as a named insured;
 - (B) the Contractor; and
 - (C) the Contractor's subcontractors;
 - (ii) professional indemnity insurance for not less than A\$10,000,000;
 - (iii) workers' compensation insurance as required by law; and
 - (iv) insurance which covers the Goods for not less than the replacement value of the Goods, which insurance must be maintained up until the Goods are accepted by the Company at the Delivery Point; and
 - (v) any other insurances required by law or reasonably required by the Company.
- (b) Insurances required by clause 18.(a)(i) must:
- (i) name the Company as principal;
 - (ii) include a cross liability clause in which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them; and
 - (iii) include a waiver of subrogation in which the insurer agrees to waive all rights of subrogation or action against the Principal.
- (c) Insurances required by clause 18.(a)(iii) must contain:
- (i) a principal's indemnity extension for both statutory liability and common law liability in favour of the Company and its respective officers and employees; and
 - (ii) a waiver of subrogation in favour of the Company and its respective officers and employees.
- (d) The Contractor must, at the request of the Company, allow the Company to inspect the policies and certificates of currency for the insurances required by this Purchase Order.

19. LIABILITY AND INDEMNITY

- (a) The Contractor agrees to indemnify and keep indemnified the Company and its personnel from and against all claims, proceedings, expenses, costs (including legal costs on a solicitor and own client basis), damages, losses and other liabilities of any kind arising directly or indirectly from a breach of any term or condition of this Purchase Order by the Contractor, except to the extent caused by the wilful misconduct or negligence of the Company or the Company's personnel.
- (b) For the purpose of section 11 of the *Property Law Act 1969 (WA)*, the Contractor intends to confer a benefit on each member of the Company's personnel in each indemnity given by the Contractor in favour of the Company in this Purchase Order and the Company holds the benefit of each of those indemnities on trust for the benefit of each member of the Company's personnel.
- (c) The provisions of Part 1F of the *Civil Liability Act 2002 (WA)* are excluded.

20. INTELLECTUAL PROPERTY

- (a) All IP Rights (present or future) created, discovered or in connection with the provision of Goods or Services under this Purchase Order will be vested in the Company and will be the Company's property as and when created.

- (b) The Contractor must, and must ensure that its personnel, execute all documents and do all things required to give the Company full legal ownership and title to the IP rights described in paragraph (a) and to protect those rights.

21. CONFIDENTIALITY

The Contractor must not, and must ensure that its personnel do not, use or disclose Confidential Information other than:

- (a) as strictly necessary for the provision of the Goods and Services under this Purchase Order; or
- (b) as required by law (including disclosure to a stock exchange), or where required for the making or defending of any claim pursuant to this Purchase Order, where such requirement has been notified to the Company.

22. NOTICES

- (a) A notice, consent, approval or other communication under this Purchase Order is only effective if it is in writing, signed and either delivered personally to the addressee's address or sent to the addressee by mail or fax. If it is personally delivered on a business day, it is taken to have been received on that business day. If it is sent by mail, it is taken to have been received 3 business days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and legible form.
- (b) The parties' addresses and fax numbers are those set out on the purchase order form, or as otherwise notified.

23. GOODS AND SERVICES TAX

- (a) If GST is imposed on any Supply made under this Purchase Order by a party (**Supplier**) to another party (**Recipient**), then the Recipient must pay to the Supplier an amount equal to that GST in addition to any other amount payable or other consideration provided for the Supply.
- (b) The Recipient's obligation to pay an amount equal to the GST under clause 23.(a) only applies if the Supplier has given the Recipient a Tax Invoice for the Supply that details the relevant amount in respect of which GST is payable and the amount of that GST.
- (c) If the amount paid by the Recipient under clause 23.(a) differs from the amount of GST payable at law by the Supplier on the Supply, the amount paid by the Supplier to the Recipient will be adjusted accordingly.

24. ENTIRE AGREEMENT

- (a) This Purchase Order constitutes the entire agreement between the parties and supersedes any prior understandings (whether oral or written) regarding the subject matter.
- (b) To the extent that the Contractor's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will have no legal effect and will not form part of this Purchase Order, even if any of the Company's personnel sign those terms and conditions or annex those terms and conditions to this Purchase Order.

25. ASSIGNMENT

- (a) The Contractor may not assign its rights or transfer its obligations under this Purchase Order without the prior written consent of the Company.
- (b) The Company may assign its rights or transfer its obligations under this Purchase Order without the prior written consent of the Contractor.

26. SUBCONTRACTING

The Contractor must not subcontract the whole or any part of its obligations under this Purchase Order without the prior written approval of the Company.

27. SEVERABILITY

The invalidity or enforceability of one or more of the provisions of this Purchase Order will not invalidate, or render unenforceable, the remaining provisions of this Purchase Order.

28. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Purchase Order constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties. At all times when performing its obligations under this Purchase Order, the Contractor is an independent contractor and not an employee or agent of the Company.

29. LAW AND JURISDICTION

This Purchase Order is governed by the laws of the State of Western Australia. Each party submits to the jurisdiction of the courts of the State of Western Australia and waives any right to claim that those courts are an inconvenient forum.

30. WAIVER

No failure to exercise and no delay in exercising any right, power or remedy under this Purchase Order will operate as an election not to exercise that right, power or remedy. A single or partial exercise of any right, power or remedy will not preclude any other or further exercise of that right, power or remedy.

31. AMENDMENT

Except as expressly provided in this Purchase Order, this Purchase Order may be amended or varied only by agreement in writing signed by the parties.