



General Conditions of a Purchase Order

The City of Gosnells (Principal) requires that the nominated Contractor to supply the Principal with the Goods and/or Services specified in the Purchase Order and agrees to provide the Goods and/or Services on the following terms.

If the Contractor is unwilling or unable to supply the Goods and/or Services in accordance with these Purchase Order conditions (including levels of insurance as detailed in Clause 18) the Contractor must immediately contact the Principal and request a variation to the Purchase Order conditions. All requests to vary the Purchase Order conditions must be submitted with justification, detailing the reason/s for the request being made in writing to procurement@gosnells.wa.gov.au. The Principal, at its absolute discretion, may reject the requested variation/s.

The Contractor must not provide Goods and/or Services to the Principal without first obtaining a Purchase Order document from the Principal.

1. DEFINITIONS

Unless the context otherwise requires:

Confidential Information means this Purchase Order and any information, regardless of its form, concerning the business, operations, finances, plans or customers of the Principal 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.

Conditions of Contract means these general conditions of contract for the supply of goods and services under this purchase order.

Contract means the Conditions of Contract and any Purchase Order.

Contractor means the contractor, consultant or supplier specified in this Purchase Order.

Contractor's Intellectual Property means any Intellectual Property of the Contractor (or Intellectual Property licensed to the Contractor by a third party) which:

- (a) is in existence before the date of the Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and
- (b) which the Contractor makes available, contributes, brings to or uses in connection with the Contract.

Contractor's Obligation means all of the Contractor's obligations under the Contract.

Defect means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services.

Delivery Point means the place set out in this Purchase Order for delivery of the Goods or otherwise notified by the Principal in writing.

Goods means any goods, materials, supplies, equipment or other items to be supplied by the Contractor pursuant to this Purchase Order.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

Intellectual Property (IP) means all intellectual and industrial property rights, including rights in respect of or in connection with any confidential information, copyright (including future copyright), moral rights, database rights, inventions, patents, trademarks, service marks, designs, semiconductors, circuits and other eligible layouts and performance protection, and includes any application or right to apply for registration or renewal of any of these rights.

Price means the price for the Goods or Services, inclusive of GST, if applicable, as set out in this Purchase Order.

Principal means the City of Gosnells, ABN 18 374 412 891, located at 2120 Albany Highway, Gosnells WA 6110.

Principal's IP means any IP of the Principal (or licensed to the Principal by a third party) which the Principal makes available, contributes, brings to or uses, in connection with the Contract.

Purchase Order means the Contract between the Principal and the Contractor comprising:

- (a) these terms and conditions;
- (b) the purchase order to which these terms and conditions are attached; and

- (c) any attachments, schedules or annexures referred to in the purchase order 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 Principal 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; and
- (d) all monetary amounts are in Australian dollars (AUD).

3. SUPPLY OF GOODS AND SERVICES

3.1 The Contractor must supply the Goods and/or provide the Services to the Principal in accordance with this Purchase Order.

3.2 No other terms or conditions, including the Contractor's own terms and conditions, even where they have been provided to the Principal or signed by a representative of the Principal, will apply or have any legal effect in connection with the supply of the Goods or the performance of the Services unless clause 29.1 is applicable.

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. CONTRACTOR'S 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 of this Purchase Order.

6. CONTRACTOR'S OBLIGATIONS

6.1 The Contractor must ensure that it, and the Contractor's personnel, in delivering the Goods or performing the Services:

- (a) complies with all applicable laws, any standards or procedures made available by the Principal, including the Principal's Contractor Safety Requirements Manual, and any reasonable instructions given by the Principal;
- (b) does not interfere with the Principal's activities, or the activities of any other person at the Delivery Point, or any place where the Contractor provides the Services;
- (c) carries out and performs the Contractor's obligations in a safe manner, in a way which does not prejudice safe working practices, safety, property or continuity of work;
- (d) supplies all plant, resources and equipment necessary to perform the Services;
- (e) leaves 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;
- (f) cooperates with any other contractor engaged by the Principal;



General Conditions of a Purchase Order

- (g) accesses the Site only through access points designated by the Principal;
- (h) not interfere with the occupation of land adjacent to the Site, or normal access to, from or within that land by third parties;
- (i) not bring onto or use on the Site any dangerous substances or carry out any dangerous activities on Site, without first obtaining the Principal's consent;
- (j) takes all proper precautions when using dangerous substances or special equipment or carrying out dangerous activities;
- (k) uses its best endeavours to minimise nuisance or disturbance to any user of the Site or any user of any neighbouring site;
- (l) coordinates the timing of its activities with the Principal;
- (m) complies with all directions given by the Principal relating to the Site or activities carried out on the Site; and
- (n) provides all information and assistance as the Principal reasonably requires.

7. QUALITY OF GOODS AND SERVICES

7.1 The Contractor must ensure that:

- (a) all Goods or Services conform to the description of the Goods or Services set out in this Purchase Order;
- (b) all Goods and Services are fit for their intended purpose and to the extent Services performed are design Services, the works being designed will be fit for their intended purpose;
- (c) if the Contractor provided the Principal with a demonstration of the Services or represented that a result could be achieved by the Services before the Principal issued this Purchase Order, the Services correspond in nature and quality with the Services demonstrated or the Services that achieved that result, whichever is applicable; and
- (d) any Goods are new and of merchantable quality.

7.2 The Contractor warrants that the Contractor's personnel engaged to perform the Services, have all the necessary skills, training and qualifications to carry out the Services in accordance with the Purchase Order.

7.3 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods and the Contractor must, at its cost, pursue any manufacturer's warranties on the Principal's behalf.

8. PACKAGING OF GOODS

8.1 The Contractor must:

- (a) pack the Goods in a way that avoids damage during loading, transit, delivery, unloading or storage, giving 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 any relevant delivery documents for the Goods, with this Purchase Order number and ensure that the delivery documents, including a packing list in each package of Goods for delivery, accompany the Goods to the Delivery Point; and
- (d) assist the Principal in obtaining documents and other information required for the resolution of any transport dispute.

9. LABOUR, PLANT AND EQUIPMENT

9.1 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.

9.2 Any plant, equipment, tools, appliances or other property and items that the Principal provides to the Contractor to enable it to complete the requirements of this Purchase Order remain the Principal's property and

must only be used for the purposes of fulfilling the Contractor's obligations under this Purchase Order.

9.3 The Contractor must keep the Principal's property in good order and condition.

10. DEFECTS

10.1 If the Goods or Services do not meet the requirements of this Purchase Order, the Principal may, at its discretion:

- (a) reject the Goods;
- (b) require the Contractor to repair or replace the Goods at no additional cost to the Principal;
- (c) require the Contractor to re-perform the Services at no additional cost to the Principal; or
- (d) procure another Contractor to perform those Services, the cost of which will be a debt due by the Original Contractor to the Principal.

11. PRICE

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

- (a) all costs and expenses for packaging, packing, freight, 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;
- (c) the Contractor's compliance with its obligations under this Purchase Order; and
- (d) the amount of any applicable GST.

12. INVOICING

12.1 The Contractor must, as a precondition for payment, submit within 14 days of delivery of the Goods or performance of the Services:

- (a) a Tax Invoice, which contains sufficient information for the Principal to determine if the Goods and Services have been provided, including:
 - (i) the Purchase Order number;
 - (ii) a clear description of the Goods delivered, including the quantity of Goods and the Date of Delivery; or
 - (iii) a clear description of the Services performed;
 - (iv) the amount being claimed for the Goods and the Services;
 - (v) the amount of any applicable GST;
 - (vi) any further information reasonably requested by the Principal; and
 - (vii) if applicable, copies of tax invoices issued to third parties, which contain sufficient information for the Principal to determine if the Goods and Services have been provided.

12.2 Tax Invoices must be sent:

- (a) by email to AP@gosnells.wa.gov.au; or
- (b) by mail, to:

Accounts Payable
City of Gosnells
PO Box 662
Gosnells WA 6990

12.3 If agreed in writing by the Principal, the Contractor may submit a Tax Invoice to the Principal at the end of each month for any Services performed during that or previous months, provided those Services have not already been included in a previous Tax Invoice issued to the Principal.

12.4 If a Tax Invoice does not contain the information required in clause 12.1(a), the Principal will return the incomplete Tax Invoice to the Contractor, requesting a replacement Tax Invoice compliant with clause 12.1(a).



General Conditions of a Purchase Order

12.5 If the Principal disputes any item or items in the Tax Invoice, the Principal shall:

- (a) notify the Contractor specifying the reasons for the dispute;
- (b) withhold payment of the disputed item or items until settlement of the dispute; and
- (c) pay the undisputed portion of the Tax Invoice in accordance with clause 14.1(c).

12.6 For a period of 12 months after payment of a Tax Invoice pursuant to this Purchase Order, the Principal 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 Principal has already made.

12.7 Where the Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, the Principal may audit the Contractor's records to determine if the Price has been correctly calculated. This right continues for a period of 12 months after submission of any Tax Invoice.

13. GOODS AND SERVICES TAX

13.1 If GST is imposed on any Supply made by the Contractor in connection with this Purchase Order, the Principal must pay to the Contractor, as included the Price, where applicable, an amount equal to the GST payable in respect of that Supply.

13.2 The Contractor must first provide the Principal with a Tax Invoice before the Principal will pay the GST to the Contractor.

14. PAYMENT

14.1 Unless this Purchase Order provides otherwise:

- (a) the Contractor will be paid in one lump sum (unless specified in an awarded contract associated with this Purchase Order) on completion of its obligations under this Purchase Order;
- (b) subject to clauses 12.3 and 14.1(a), the Principal will pay the Contractor within 14 days of the date of the Tax Invoice and receipt of sufficient supporting information;
- (c) the Contractor agrees that the Principal may withhold payment of any amounts payable pending resolution of any dispute; and
- (d) without limiting the Contractor's rights under any other provision of this Purchase Order or generally, all monies due to the Principal by the Contractor and all losses, costs, charges, damages or expenses which the Principal may have incurred or paid and for which the Contractor is liable, may be deducted by the Principal from any amount due under this Purchase Order to the Contractor.

15. VARIATION

15.1 The Principal may at any time vary this Purchase Order by written notice to the Contractor.

15.2 Within seven days of receipt of a notice issued pursuant to clause 15.1, the Contractor must advise the Principal of any change in Price arising from the variation. Any change must be based on agreed rates, if any, or reasonable rates and prices in the market at that time.

15.3 If the Contractor is supplying Goods or providing Services after being awarded a formal contract by the Principal, as per clause 29.1, the Contractor must comply, and provide written application, in accordance with, the Rise and Fall variation clause found within the contract documentation.

15.4 All variations to these terms must be made in writing to procurement@gosnells.wa.gov.au and approved by the Principal prior to the Contractor delivering any works under any Purchase Order.

16. CANCELLATION OF THIS PURCHASE ORDER

16.1 The Principal may cancel the Purchase Order by written notice to the Contractor:

- (a) at any time and at its absolute discretion by giving seven days' notice to the Contractor;
- (b) upon identification of Goods or Services provided with defects in accordance with clause 10.1 where the Contractor fails to remedy

that defect within 14 days of the Principal giving notice of the defect; or

- (c) immediately if an Insolvency Event occurs.

16.2 On termination of the Purchase Order, the Contractor must promptly return to the Principal any of the Principal's Confidential Information, property and documents which the Principal owns or in which the Principal has an interest.

16.3 If the Purchase Order is cancelled under clause 16.1(a):

- (a) the Principal must pay the Contractor that part of the Price for any Contractor's Obligations performed prior to cancellation that have not already been paid by the Principal; and
- (b) the Contractor is not entitled to, and the Principal is not liable for, any additional amounts whatsoever.

16.4 The Principal must pay the Contractor that part of the Purchase Order for any Contractor's obligations performed prior to cancellation of this Purchase Order that have not already been paid by the Principal.

17. TITLE AND RISK

17.1 Title in the Goods will pass from the Contractor to the Principal upon payment of the Purchase Order Price. The Contractor warrants that title in the Goods will be transferred to the Principal without any additional charges, encumbrances or liens.

17.2 Risk in the Goods will pass to the Principal on acceptance of the Goods by the Principal's representative at the Delivery Point.

18. INSURANCE

18.1 The Contractor warrants that it has obtained, and throughout the duration of this Contract (including any Defects Liability Period) all applicable insurance cover(s) required by Australian law (Municipal, State and Commonwealth) and by this Contract, including, but not limited to, the following:

- (a) Goods
 - i. Transit and Material Damage Insurance for the Goods' purchase value (including freight and other charges), up until title and risk in the Goods pass to the Principal.
- (b) Services or Site works:
 - i. Public and Products Liability Insurance, with a minimum limit of not less than ten million dollars (\$10,000,000) for any one occurrence;
 - ii. Workers Compensation and Employers Liability Insurance, in accordance with the law of the State in which the work is performed. Such insurance must meet all common law liability; and
 - iii. Motor Vehicle Third Party Liability Property Damage, with a minimum limit of not less than twenty-five million dollars (\$25,000,000) for any one occurrence.
- (c) if any goods/services or works are deemed high risk by the Principal, the Principal reserves the right to request increased levels of insurance or additional insurance, as deemed reasonable by the Principal.
- (d) any additional insurance required by an applicable law.

18.2 Where such Services referred to in clause 18.1 include the giving of professional advice or instruction, design, formula or specification, the Contractor must effect Professional Indemnity insurance with a minimum cover of not less than two million dollars (\$2,000,000) for any one claim.

18.3 Notwithstanding clauses 18.1(a)(b)(c) and (d), if the Contractor has been awarded a formal contract by the Principal, the insurance required under the formal contract will be applicable.

18.4 If the Principal permits the Contractor to subcontract the provision of any Goods and/or Services, then the Contractor must ensure that any relevant subcontractor must obtain and maintain insurances which comply with the requirements of this clause.

18.5 The Contractor must, at the request of the Principal (or any third party working on behalf of the Principal), provide to the Principal the policies and certificates of currency applicable to the Goods supplied and



General Conditions of a Purchase Order

Services rendered by the Contractor for the Principal, as defined within this Purchase Order.

18.6 The Principal has an insurance policy in place with Local Community Insurance Services that provides \$10 million public and products liability insurance coverage for approved uninsured non-commercial (hobbyist) Performers, Stallholders, Roaming Entertainers and Buskers that are contracted by the Principal for one-off events and programs. Should any Contractor be unable to meet the insurance requirements of clause 18.1 and considers themselves an approved uninsured non-commercial Contractor a variation can be requested under clause 15.4.

19. LIABILITY AND INDEMNITY

19.1 The Contractor indemnifies the Principal and the Principal's officers, employees, agents and contractors for and against any claims (including third party claims) and losses suffered or incurred by any of them arising out of, or in connection with, any wrongful act or omission of the Contractor or any of the Contractor's personnel. This indemnity will be reduced to the extent that the claim or loss is caused by the negligence of the Principal or the Principal's officers, employees, agents and contractors.

19.2 Neither party is liable to the other for Consequential Loss.

20. INTELLECTUAL PROPERTY

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

20.2 The Contractor, and the Contractor's personnel, must execute all documents and do all things required to give the Principal full legal ownership and title to the IP rights described in clause 20.1 and to protect those rights.

21. CONFIDENTIAL INFORMATION

21.1 The Contractor must not use or disclose any Confidential Information other than to any of the Contractor's personnel who need the information to perform the Services or deliver the Goods, to the Contractor's legal advisers or where required by Law.

21.2 Further the Principal will keep all information, pertaining to the Contractor and its nominated financial institution account, private and confidential.

21.3 The Principal will make reasonable efforts to keep any such information that we have about the Contractor secure and to ensure that any of the Principal's employees or agents who have access to information about the Contractor, do not make any unauthorised use, modification, reproduction or disclosure of that information.

21.4 The Principal will only disclose information held about the Contractor:

- (a) to the extent specifically permitted by the law; or
- (b) for the purpose of this agreement (including disclosing information in connection with any query, dispute of claim); or
- (c) to verify details of the Contractor (via third party verification where applicable) including banking information (eg. BSB and bank account number).

22. NOTICES

22.1 Any notice or other communication relating to the Contract must be:

- (a) in writing;
- (b) signed by the sender or its agent; and
- (c) either hand delivered, sent by pre-paid post, faxed or emailed to the other party at the address, fax number or email address set out in the Purchase Order.

22.2 If a notice 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 four business days after it is posted. If it is sent

by fax or email, it is taken to have been received when the addressee actually receives it in full and legible form.

23. ENTIRE AGREEMENT

This Purchase Order constitutes the entire agreement between the parties and supersedes any prior understandings (except where a formal contract with the Principal exists), whether oral or written, regarding the subject matter.

24. ASSIGNMENT

24.1 The Contractor may not assign its rights, subcontract the whole, or any part of, or transfer its obligations under this Purchase Order without the prior written consent of the Principal.

24.2 The Principal may assign its rights or transfer its obligations under this Purchase Order without the prior written consent of the Contractor.

25. 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.

26. 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 Principal.

27. 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.

28. 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.

29. FORMAL CONTRACTS (WHERE APPLICABLE)

29.1 If this Purchase Order is associated with the supply of Goods and/or Services under an awarded:

- (a) Tender;
- (b) Request for Quote (RFQ); or
- (c) Established Panel of Pre-Qualified Suppliers;

then the General and/or Special Conditions of contract in the formal contract documents take precedence over these General Conditions of Contract.