

PURCHASE ORDER TERMS AND CONDITIONS



1 DEFINITIONS

Acceptance occurs when Deliverables are delivered in accordance with the Purchase Order and have passed any inspection which may be required by the Council.

Council means the Glenorchy City Council (ABN 19 753 252 493) of 374 Main Road Glenorchy.

Contractor means the party named as the Contractor in the Purchase Order.

Contract Sum means the amount payable by Council to the Contractor as set out in the Purchase Order.

Deliverables means the goods and services described in the Purchase Order that the Contractor is required to provide under this Purchase Order.

Delivery Date means the date that the Deliverables are to be supplied to Council as set out in a Purchase Order.

Delivery Location means the place where the Deliverables are to be delivered or provided as notified by Council.

GST has the meaning given in the *A New Tax System (Goods and Deliverables Tax) Act 1999* (Cth).

Insolvent has the meaning given to it by the *Corporation Act 2001(Cth)* as if the Contractor were a corporation, or any other situation such as entering into receivership or an arrangement with creditors, where the Contractor is reasonably unlikely in the Council's opinion, to have the immediate cash flow to complete the Deliverables.

Intellectual Property Rights includes all intellectual and industrial property rights such as copyright, design, patent, trademark, database rights, domain name, moral rights, or business name.

Intervening Event means an event or cause listed below, to the extent that the event or cause is beyond the reasonable control of the relevant party and makes the performance of an obligation under this Agreement impossible and not merely more onerous or uneconomical including:

- (a) act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, or landslide;
- (b) strike, lockout, or other labour difficulty but not a strike or lockout directly involving the party claiming an Intervening Event; or
- (c) act of war, terrorism, sabotage, revolution, riot, insurrection, civil commotion or epidemic.

Key Personnel means the Contractor personnel that are specified as such by qualification, name or role in the Purchase Order.

Legislative Requirements means acts, laws, ordinances, regulations, by-laws, orders, workplace health and safety codes, awards and proclamations whether Commonwealth, State or local.

Maintenance Period means a period provided in relation to a Deliverable where repair and maintenance is provided at no cost to the Council. If no period is stated, a period of 12 months applies from Acceptance.

Payment Schedule means for the purposes of the SOP Act a progress schedule issued pursuant to clause SC8 (d).

Project Plan means the plan developed by the Contractor describing how the Contractor will provide the Deliverables in accordance with the Contract, using the specified equipment, staff, software, operating environment, or other features specified in the Agreement.

Purchase Order means the document relates to the Deliverables that is headed as such and incorporates these terms.

Reference Date means for the purposes of the SOP Act the date for lodgement of a progress claim under clause SC8(b), even if the progress claim is an early progress claim.

Site/s means the place or places where the Works is required to be executed.

SOP Act means the *Building and Construction Industry Security of Payment Act 2009*.

Support/Supported means provided with features such as training, information, software updates, and spare parts so that a Deliverable can continue to comply with the obligations of this Agreement.

Works means work which the Contractor is required to perform (all or in part) and complete under the Contract or Purchase Order as part of the Deliverables.

2 PROVISION OF DELIVERABLES

2.1 General requirements

The Contractor must provide the Deliverables:

- (a) with due care and skill, and to a standard to be expected of a competent and experienced professional person and be performed by suitably qualified personnel in accordance with any Project Plan;

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- (b) in accordance with the Purchase Order and specifications provided by Council; and
- (c) in accordance with Legislative Requirements and Council's reasonable directions and policies (including privacy and workplace health and safety requirements).

2.2 Standard of Deliverables

The Contractor remains fully responsible for:

- (a) all Deliverables until Acceptance.
- (b) obtaining and maintaining, at its cost, all licences, approvals, authorisations, consents or permits required to provide the Deliverables
- (c) Support the Deliverables during the Term and any Maintenance Period. If a Deliverable is no longer available or cannot be Supported as required by the Agreement, then the Contractor must, at their own cost, provide a fit for purpose substitute that is able to comply with the obligations of this Agreement.; and
- (d) unloading any goods at the Delivery Location.

3 QUALITY OF DELIVERABLES

3.1 Deficiency in Deliverables

- (a) Acceptance does not prejudice any future claim by Council for a defective Deliverable.
- (b) If Council is not reasonably satisfied with the quality of any part of the Deliverables provided by the Contractor at any time it may classify them as defective and refuse to provide payment for that part of the Deliverables.
- (c) the Contractor indemnifies Council against all costs incurred by Council in connection with having the defective Deliverables provided, where that cost exceeds the costs that would have been incurred by Council if the Contractor had performed in accordance with this Purchase Order.

4 PAYMENT

- (a) Subject to the SOP Act and SC8 if applicable, provided that the Contractor has complied with this Purchase Order, Council will pay the Contract Sum claimed by within 30 days, or as otherwise agreed.
- (b) If GST is imposed or payable, the recipient of the supply must pay to the supplier an additional amount equal to the GST liability.

5 INTELLECTUAL PROPERTY

- (a) Council owns Intellectual Property Rights in any material created in the course of providing the Deliverables. The Contractor will do all acts to give effect to this clause.
- (b) The Contractor warrants that the provision of the Deliverables to Council does not infringe the Intellectual Property Rights of any person.

6 TERMINATION

- (a) This Purchase Order may be terminated:
 - (i) at any time by mutual agreement;
 - (ii) upon a breach of this Purchase Order by either party which is not remedied within 14 days of giving notice of the breach;
 - (iii) upon the occurrence of an Intervening Event; or
 - (iv) immediately by either party in the event the other party becomes Insolvent.
- (b) Upon termination of this Purchase Order for any reason the Contractor will, upon request, return all material in which Council holds Intellectual Property Rights.
- (c) Unless agreed otherwise in writing, nothing in this clause prejudices the right of the Council to exercise any other right or remedy in relation to an early termination.

7 NO EMPLOYMENT RELATIONSHIP

This Purchase Order does not represent or imply a partnership, agency, fiduciary relationship, employment relationship, joint venture, distribution or any other similar category of relationship between the parties.

8 KEY PERSONNEL

- (a) If the Deliverables or certain tasks are required to be provided by Key Personnel, then only those personnel may perform the Deliverables or those specified tasks
- (b) if the Council (acting reasonably) forms the view that any Key Personnel have breached the contract, are incompetent, negligent, or guilty of misconduct the Contractor will replace those persons without any increase to the price.

9 ENTIRE PURCHASE ORDER

This Purchase Order constitutes the entire Purchase Order between the parties except for any Council standardised contract that may have been separately agreed by the parties for the same Deliverables.

10 CONFIDENTIALITY

Except as required by law, the Contractor shall keep confidential any information which is designated by Council as confidential, or which the Contractor should reasonably have known was confidential.

11 PRIVACY

Any Contractor collecting, using or storing “personal information”, “sensitive information” “health information” or “employee information” (as defined by the Personal Information Protection Act 2004):

- (a) must present to the Council a data privacy and breach plan in a form acceptable to Council, and comply with that plan;
- (b) undertakes to voluntarily notify the Council and the Office of the Australian Information Commissioner (or its successor) of a breach;
- (c) must actively cooperate with council in notifying those affected by a privacy breach, including answering technical enquiries about protective actions affected people might take; and
- (c) undertakes not to rely on exemptions, such as the minimum turnover requirements in privacy laws, to avoid notifying, or responding to privacy breaches.

12 SYSTEM SECURITY

Where the Deliverables relate to the provision of software services, hosting of Council data, receiving Personal Information, or making a network link to a Council computer system, the Contractor must:

- (a) General Obligations
 - (i) participate in periodic systems security audits conducted by the Council to ensure ongoing compliance;
 - (ii) act promptly to rectify any system security vulnerabilities identified during audits, or other processes;
 - (iii) promptly take steps to protect and secure websites and computer systems following a security breach;
 - (iv) Actively cooperate with council to manage the consequences of a security breach, including to minimise damage to the Council’s reputation with its stakeholders; and
 - (v) take other systems security measures reasonably specified by Council from time to time.

- (b) System security standards

- (i) The contractor is required to demonstrate that they are certified to ISO 27001 standard or an equivalent standard acceptable to Council, or
- (ii) present to the Council a systems security plan in a form acceptable to Council. The Contractor must comply with any approved systems security plan;

- (c) Content of the System security plan

Any system security plan must provide for at least:

- (i) installing software patches that are designated “critical” by the software vendor within 5 days of release;
- (ii) installing software patches that are designated “noncritical” by the software vendor within 21 days of release;
- (iii) conduct yearly penetration and vulnerabilities testing, and the provision of results are then to be provided to Council;
- (iv) participate in Council monthly scans of relevant systems, and respond to the Council’s findings by taking reasonable steps to rectify any security vulnerability;
- (iv) store sensitive information encrypted at rest or in transit;
- (v) if providing for remote access to systems, have Multifactor Authentication safeguards;
- (vi) run up-to-date firewall and anti-virus software as recommended by Council, or software vendor recommendations;
- (vii) any other matter required by Council.

13 WHS

- (a) The Contractor may be required to provide a copy of its Workplace Health and Safety Management System to the Council. The review or not of this plan by the Council does not act to relieve the Contractor of any WHS responsibilities or constitute a transfer of liability to the Council.
- (b) The Contractor must report incidents to the Council and participate in audits. The Contractor must undertake induction where directed by Council.

14 NOTICES

A notice or other communication to be given or made under this Purchase Order must be in writing and addressed to the Representative of each of the parties at the address or email address (as the case may require) outlined in the Purchase Order.

15 GENERAL

- (a) An amendment or variation to this Purchase Order is to be in writing and signed by the parties.
- (b) Neither party may assign or subcontract this Purchase Order without the prior written consent of the other party.
- (c) This Purchase Order is governed by the laws of Tasmania, and the parties submit to the exclusive jurisdiction of the courts of Tasmania.

16 CONFLICT OF INTEREST

The Contractor must immediately notify Council of the existence or likelihood of a conflict of interest as soon as it becomes apparent and cooperate with Council to resolve such conflict of interest.

SPECIAL CONDITIONS FOR IT RELATED CONTRACTS

Where the Deliverables include the supply of software products and other information technology (IT) based services, then the following Special Conditions apply.

SC2. TESTING

- (a) The Contractor will develop, install and test the Deliverables with minimum disruption to the normal use and occupancy of the Site.
- (b) The Council may specify additional tests to be carried out following rectification action in respect of any Defects or system underperformance.

SC3 LICENCES AND UPDATES

- (a) The Contractor will provide at no additional charge any licenses, authorisations, updates, new releases, or other support services required by the Agreement or usually provided to customers of that product.
- (b) Where the Council acquires other systems to vary, replace or add to the Council's existing systems that are serviced or managed by the Contractor, then the Contractor will provide reasonable assistance to the Council to effect the systems interface/cutover.

- (c) If requested the Contractor must provide a Project Plan acceptable to Council. The Contractor must comply with the approved Project Plan.

SC.4 OUTAGE AND FAULT HANDLING

The Contractor is to submit an outage and fault handling procedure for approval. If no procedure is not provided or approved within a reasonable time, the Council may prescribe a procedure. The contractor is comply with an approved procedure.

SPECIAL CONDITIONS FOR CONSTRUCTION WORKS

Where the Deliverables include construction works, then the following Special Conditions apply.

SC5. COMPLETE CONTRACT

- (a) The Contractor must provide everything necessary for the completion of the Works.
- (b) The Contract Sum includes the removal and disposal of the existing materials.
- (c) If the Purchase Order does not specify the standard of materials or workmanship required, the Contractor must use new materials and appropriate standards that produce Works that are fit for purpose.
- (d) Everything in the knowledge of the Contractor's representative is deemed to be within in the Contractor's knowledge. The Contractor will be deemed to have allowed sufficiently for the ground and site conditions.

SC6. EXECUTION OF THE WORKS

- (a) The Contractor must execute the Works in accordance with:
 - (i) any specifications, plans, drawings, instructions or other description(s) of the Council's requirements that are attached to, referenced or issued with this Purchase Order; and
 - (ii) any prior written representations made by the Contractor as to the extent, manner of performance and quality of the Works.
- (b) The Contractor is responsible for caring for the Works and must safeguard the Works and the Site until such time as the Works are completed.
- (c) If the Contractor does not personally execute and supervise the Works or ensure that they are supervised and managed by a competent and experienced Contractor's representative.

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- (d) The Contractor, its representative, employees and subcontractors must hold any occupational and other licenses and accreditations required by any Legislative Requirement.
- (e) The Contractor must take reasonable steps to protect people and property and avoid obstructing other uses of the site.
- (f) The Council will give the Contractor enough access to the Site for the Contractor to commence and carry out the Works specified in the Purchase Order. Unless agreed otherwise, the dates and times for working on site will be as directed in writing by the Council. The Council may access and inspect the Site even while Works are being performed.

SC8. SECURITY OF PAYMENT

- (a) If the SOP Act applies to a progress claim, then the Contractor must ensure that within 24 hours after any notice under the SOP Act (other than a payment claim or payment schedule) is given or received by the Contractor or any subcontractor, a copy of that notice is given to the Council; and
- (b) Unless the Purchase Order specifies otherwise, the Contractor will claim payment progressively on the last day of each month in which the Works are performed. An early progress claim will be deemed to have been made on the date for making that claim.
- (c) Each progress claim must be given in writing to the Council and will include details of the value of the Works performed.
- (d) The Council will, within the time required by the SOP Act after receiving a progress claim, assess the claim and issue a payment schedule stating the moneys due to the Contractor or the Council, as the case may be.
- (e) The Council will set out in the progress schedule the calculations employed to arrive at the amount certified and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference.
- (f) Within 30 days after receipt by the Council of a progress claim, the Council or the Contractor, as the case may be, will pay:
 - (i) the amount certified, if the Council has issued a progress schedule with respect to the progress claim; or
 - (ii) the amount of the progress claim, if the Council has not issued a payment schedule.

- (iii) Interest in the amount adjudicated under the SOP Act or 10% per annum will be due and payable after the date of default in payment.

SC9. WORK HEALTH AND SAFETY ('WHS')

- (a) The Contractor must, and must ensure that all of its employees, subcontractors and agents:
 - (i) carry out the Works safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) comply with all Legislative Requirements in respect of work health and safety, including any relevant codes of practice approved under the Legislative Requirements.
- (b) The Contractor must comply with its duty under any applicable Legislative Requirements to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter.

SC10 VARIATIONS

The Contractor must not effect any change to the Works unless the Council has given the Contractor a written direction requiring that action. The Contractor must, within 10 Business Days, provide the Council with an itemised variation quotation for the cost of performing the direction, or it must carry out the work for the direction at no additional cost.