

GISBORNE DISTRICT COUNCIL

Purchase Order Terms and Conditions of Supply

1st September 2022

These terms & conditions apply to all Purchase Orders issued by the Council on or after 1 September 2022 until further notice.

1. Formation of Contract

1.1 Subject to clause 1.2, this contract for the sale and purchase of Goods and/or Services (Contract) will arise on the Supplier's acceptance of an Order (whether by written acknowledgement or by Delivery) and will embody the terms of the relevant Order and the following terms and conditions. In the event of any inconsistency between the terms of the relevant Order and these terms and conditions, the terms of the relevant Order will prevail.

1.2 In the event that the parties have signed a written agreement for the provision of the Goods and/or Services, the terms and condition of that agreement will apply and not these terms and conditions.

1.3 Subject to clause 1.2, the terms of the relevant Order together with these terms and conditions comprise the entire agreement of the parties in relation to the supply of Goods and/or Services and supersede any previous discussions, arrangements and representations. Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Goods and/or Services (for example, the Suppliers purchase terms and conditions) will not apply.

1.4 Regardless of which department places the order on behalf of Council, Council is the principal contracting party and is solely responsible for the obligations arising under the Contract.

1.5 If an Order is not accepted by the Supplier's written acknowledgement or Delivery within 10 Days of the date of the Order, Council may, by written notice to the Supplier, cancel the Order.

1.6 Any estimates provided by the Council in relation to a Purchase Order are provided for the assistance of the Supplier. Such estimates do not form part of the contract and do not in any way give rise to any price adjustment claim by the Supplier.

2. Price

2.1. The prices stated on the Council's Purchase Order are fixed, unless there is prior written approval from both parties.

2.2. The price includes the Goods and/or Services, freight, insurance, packaging, crating, local cartage, customs duty and/or any other cost involved in the delivery of the Goods and/or Services.

2.3. The Supplier is not entitled to claim expenses, surcharges, margins or disbursements except if otherwise agreed in advance and in writing by the Council.

2.4. The price is exclusive of GST.

3. Payment

3.1 The Delivery of all Goods must be accompanied by detailed advice notes (packing slips).

3.2 The Supplier shall:

(a) following completion of the Delivery of the Goods and/or Services, send a valid tax invoice to the Council at the address stated in the Order; and

(b) ensure that all invoices, packing slips, advice notes and correspondence contain the Purchase Order Number and any other information specified in the Order or as reasonably requested by the Council.

3.3 The Supplier's tax invoice must:

(a) be typewritten (either computer generated or typed), and must not be handwritten;

(b) be sent by email to accounts@gdc.govt.nz;

(c) include the Supplier's GST number and any other information for a valid tax invoice (if applicable);

(d) include the relevant Purchase Order Number;

(e) include a description of the Goods and/or Services supplied and any relevant dates of delivery;

(f) show the total payable by the Council, with details of how this amount has been derived; and

(g) ensure the invoice is clearly addressed to the Council.

3.4 The Supplier acknowledges that payment may be delayed if Council's invoicing and payment process requirements (as set out in these Terms and Conditions) are not followed by the Supplier.

3.5 Subject to compliance with these Terms and Conditions and there not being manifest errors or discrepancies, the Supplier's invoice for the Goods and/or Services will be paid by Council on the 20th day of the month following the date of the invoice or the next Working Day, provided the invoice has been received by the Council no later than the 5th day of the month.

Example: for monthly goods or services provided in January:

- A valid invoice dated 31 January and delivered by 5 February will be paid on 20 February;
- A valid invoice dated 31 January and delivered between 6 February and 5 March will be paid on 20 March.

3.6 If any aspect of a tax invoice or the Delivery of the Goods and/or Services is disputed by Council, Council may withhold payment of the relevant invoice or part thereof until such time as the dispute is resolved.

3.7 In making payment for the Goods and/or Services, Council may withhold, deduct or set off any amount that was previously overpaid or any amount recoverable by Council from the Supplier under the Contract or otherwise.

3.8 For supplies of Services that are applicable, unless a valid Certificate of Exemption is provided prior to the Delivery of the Services, the Council will deduct Withholding Tax (Scheduler Payments) as set out in the Income Tax Act 2007. A signed Tax Code Declaration will be required.

3.9 For supplies of Goods and/or Services that are applicable, unless a valid Certificate of Exemption is provided prior to the Delivery of Goods and/or Services, Council will deduct Non-Resident Withholding Tax as set out in the Income Tax Act 2007.

4. Packing, Delivery and Installation

4.1 The Supplier must obtain a valid Purchase Order Number from the Council before supplying Goods and/or Services.

4.2 Goods supplied against an invalid Purchase Order may be returned at the Supplier's expense including the cost of packing, transporting, insuring and handling of the rejected Goods.

4.3 The Supplier is responsible for the safe and undamaged delivery of all Goods to the Council. The Supplier will adequately pack and protect the Goods against damage and deterioration, at the Supplier's expense.

4.4 The Supplier must deliver the Goods and/or Services not later than the time/s specified in the Order or, if no time is specified in the Order,

within a reasonable time of the date of the Order. In this regard time is of the essence.

4.5 The Council accepts no responsibility for the delivery of Goods and/or Services (unless otherwise agreed) or for packing materials and cases.

4.6 If an emergency or disaster occurs, the Supplier will use its best endeavours to provide or delay Delivery as requested by the Council.

4.7 Where required by the Order the Supplier will install the Goods at the Site in accordance with the installation instructions, all applicable industry and good practice standards, all statutory and regulatory requirements and with due care and skill.

4.8 The Supplier shall deliver and install the Equipment in accordance with all reasonable Council instructions.

4.9 The Supplier shall provide to the Council all standard manufacturer or supplier warranties and guarantees relating to the Goods.

5. Acceptance of Goods

5.1 The Goods shall be accepted by the Council on completion of Delivery and (where applicable) installation and on the Council being satisfied that the Goods are to specification and, where the Supplier is responsible for installation, are correctly installed and functioning.

5.2 The signing of any delivery receipt or similar document by a Council representative does not indicate Council's acceptance of the Goods.

6. Passing of Title and Risk

6.1 Property in the Goods and risk passes to the Council on Delivery to and acceptance by the Council.

6.2 Property in the Goods passes to the Council free of any prior interest or encumbrance.

6.3 The Supplier warrants it has the right to sell the Goods.

7. Warranties

7.1 In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to Council and to any subsequent purchaser of the Goods and/or Services that:

(a) the Goods are (unless specified otherwise in the Order) new, in good order and merchantable condition and are fit for the purpose for which it is intended as stated in any product specification or requirements set out in the Order or provided by the Council or otherwise as held out by the Supplier;

(b) the Goods comply with all applicable product standards and regulatory or other statutory requirements;

- (c) the Goods and/or Services will comply with any specifications supplied by the Council or agreed between the parties, will be fit for any purpose that Council makes known to the Supplier and will comply with all applicable legislation, regulations, standards and codes of practice;
- (e) the Supplier has all Intellectual Property rights relating to the Goods and/or Services required for the Goods and/or Services to be provided to Council and neither the Goods and/or Services, nor the provision or use of the Goods and/or Services by Council will breach any Intellectual Property rights of any third party;
- (g) Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience; and
- (h) in the supply of the Goods and/or Services, the Supplier will comply with all applicable legislation, regulation and industry codes of practice.

8. Default and Cancellation

- 8.1 If the Supplier breaches any term of the Contract then, at the sole option of the Council, and without prejudice to any other remedy or right, the Council may:
- (a) if the term relates to Goods, reject the Goods in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense including the cost of packing, transporting, insuring and handling the rejected Goods and the Supplier must immediately reimburse the Council for any monies paid in respect of the returned Goods;
 - (b) if the term relates to Goods, require the Supplier to replace, repair, reinstate or re-supply the Goods at the Supplier's expense so that they conform to the Contract or may have the Goods replaced, repaired or re-supplied by another person and recover the cost of doing so from the Supplier;
 - (c) if the term relates to Services, require the Supplier to perform the Services again to the required standard at the Supplier's expense or may have the Services re-supplied by another person and recover the cost of doing so from the Supplier;
 - (d) if the term relates to health and safety, immediately terminate (or suspend Supplier's performance of) this Contract in whole or in part and/or any Order by written notice to Supplier;
 - (e) and/or suspend payment for the Goods and/or Services until the breach has been remedied to the Council's reasonable satisfaction.

Any contract suspension is not to the Council's financial account.

- 8.2 The Council may terminate the Contract or cancel any Order effective immediately if the Supplier breaches any provision of the Contract and fails to remedy the breach within 10 Days of giving written notice to the Supplier specifying the breach and requiring it to be remedied. Breach of clauses 7 and/or 15 by the Supplier may be deemed as breach of the Contract whether or not the Council elects to accept the Goods and/or Services in question.
- 8.3 The Council may, by written notice to the Supplier, terminate the Contract or cancel any Order immediately if the Supplier becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.
- 8.4 The Council may terminate this Contract by giving the Supplier 10 Days' written notice. In the event that the Council does so, this Contract will terminate and any outstanding Orders at the end of the period of notice will be deemed cancelled.
- 8.5 Subject to the Council's rights of deduction or set-off, the Council will pay the Supplier for any Goods and/or Services validly provided up to the date of termination.
- 8.6 No failure or delay on the part of the Council to exercise any of its rights in respect of any default by the Supplier will prejudice the Council's rights in connection with that default or any subsequent default.
- 8.7 Termination of the Contract and/or cancellation of an Order does not affect any responsibilities which are intended to continue or come into effect after the Contract terminates.

9. Indemnity

- 9.1 The Supplier will fully protect, indemnify and hold harmless the Council organisation, its officers, employees and agents from and against any liability, losses, damages, actions, proceedings, claims, demands, costs and expenses including solicitor and own client costs, incurred in connection with any breach by the Supplier of any term of the Contract or the negligent or wrongful act or default of the Supplier or any of its employees, subcontractors or agents. This obligation continues after the termination or expiry of the Contract.

10. Relationship between Parties

- 10.1 Nothing in the Contract should be interpreted as constituting either the Council or the Supplier, an agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in the Contract.
- 10.2 The Council's relationship with the Supplier is not exclusive.

10.4 The Council may carry out a review of the Supplier's performance under this Contract at any time and the Supplier agrees to co-operate fully with the Council, including by attending all relevant meetings and providing all requested records and information.

11. Confidentiality

11.1 All Confidential Information will be and will remain the property of the Council, and the Supplier must:

- (a) keep all Confidential Information confidential and use the Confidential Information only for the purpose of the Contract;
- (b) not disclose any Confidential Information to any person without the prior written consent of the Council (unless the disclosure is required under law); and
- (c) destroy or return the Confidential Information to the Council upon the Council's request at any time, provided that the Supplier may disclose Confidential Information to its employees, subcontractors and advisers to the extent necessary for the purposes of the Contract. The Supplier will ensure that its employees, subcontractors and advisers will comply with these obligations of confidentiality.

11.2 The Supplier will not use the Council's name in advertising its business or activities without the prior written consent of the Council, and will comply with all reasonable terms and conditions upon which such permission may be given.

11.4 This clause 11 survives termination and expiry of the Contract.

12. Official Information Legislation

12.1 The parties acknowledge that Council is subject to the Local Government Official Information and Meetings Act 1987 and that under that Act the Council may be required to release information about this Contract and the Supplier.

12.2 Supplier must keep full records and documentation in relation to the Services and this Agreement ("records") and provide copies of records to Council on reasonable request, and immediately notify Council of any disclosure requests Supplier receives (including under the Local Government Official Information and Meetings Act 1987).

12.3 The Supplier agrees to assist the Council in complying with the requirements of the Local Government Official Information and Meetings Act 1987 in relation to all information relating to the Council held by the Supplier or its employees.

12.4 The Supplier will not otherwise release information to a third party unless compelled by a competent authority, in which case it will

immediately advise the Council as to the information released.

13. Health and Safety Council Organisation Protocols

13.1 Where Services are being provided, the Supplier must at all times:

- (a) comply with all health and safety legislation, regulations, applicable codes of practice and standards, Council's health and safety policies and procedures, and any standard operating procedures;
- (b) take all practicable steps to ensure the health and safety of all personnel of the Supplier, and any other parties associated with the Services, including Council, workers, visitors, subcontractors, service providers, the public, and visitors to any area under the control of the Supplier;
- (c) have, and keep current, all relevant health and safety qualifications required to perform its obligations under this Agreement;
- (d) immediately provide Council with information about any health and safety matters relating to the Services, if requested; and
- (e) comply with all reasonable directions given by Council in relation to health and safety in connection with this Agreement.

13.2 The Supplier will, upon request, immediately provide Council with information about any health and safety matters relating to the Services.

13.3 The Supplier must:

- (a) so far as is reasonably practicable, consult, co-operate with and co-ordinate its activities with Council in relation to the Services;
- (b) facilitate engagement between the parties (and/or its designees) in relation to work health and safety matters; and
- (c) ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.

13.4 If the Supplier is carrying out the Services at a Council (or Council Controlled Organisation) owned or controlled site then the Supplier must:

- (a) participate in Council's emergency procedures, workplace assessments, training or orientation and any other relevant health and safety activities (if requested);
- (b) participate in Council's worker participation practices (if requested); and
- (c) identify and address any special needs requirements.

13.5 Council (or its representatives) may carry out an audit of the Supplier to ensure compliance with

all obligations set out under this clause 13. The Supplier must:

- (a) actively cooperate and participate in any health and safety audits carried out by Council;
- (b) provide all necessary access and information required by Council in relation to the audit and any other health and safety monitoring; and
- (c) take all reasonable steps to immediately rectify any issues raised by Council.

13.6 The Supplier must immediately notify Council, and provide Council with such assistance and information as the Council requires, in relation to any of the following matters:

- (a) "notifiable event" (as defined in the Health and Safety at Work Act 2015);
- (b) near miss or exposure the Supplier becomes aware of in the course of undertaking the Services,
- (c) any WorkSafe inspection, investigation or information request in connection with the Supplier's performance of the Services; and/or;
- (d) breach of this clause 13.

13.7 Without limitation to Council's other rights and remedies at law or under this Contract, Council may immediately withhold any payment if the Supplier is in breach of any of its obligations under this clause.

13.8 The Supplier shall, prior to commencing the Services, undertake a site specific risk assessment and prepare and submit to the Council organisation a site specific safety plan for the execution of the Services.

This clause 13 also applies to the Supplier's subcontractors, including the reporting, notification and compliance obligations. Supplier shall ensure that its subcontractors are aware of and comply with these obligations. Clauses 13.5 and 13.6 survive termination and expiry of the Contract.

14. Intellectual Property

14.1 All Intellectual Property owned by either party and existing prior to the commencement of the supply of Goods and /or Services will remain the exclusive property of that party.

14.2 All new Intellectual Property that arises or is created by the Supplier or any of the Supplier's employees, subcontractors or agents in the course of supplying the Goods and/or Services will be Council's exclusive property.

14.3 The Supplier grants to Council a perpetual, royalty free, non-exclusive licence to use all Intellectual Property owned by the Supplier under clause 14.1.

15. Assignment and Subcontracting

15.1 The Supplier may not assign, subcontract or otherwise transfer any of its rights, benefits or obligations under the Contract without the prior written consent of Council. A change in the management or control of the Supplier or the sale of a major part of the Supplier's business or assets will be deemed to be an assignment for the purposes of this clause.

15.2 Where Council consents to the Supplier assigning, subcontracting or transferring any of its obligations under, or aspect of, this Contract to a third party, the Supplier will remain fully responsible for all obligations to Council under the Contract.

16. Notices

16.1 Any notice to be given under the Contract must be in writing and must be delivered or sent by post or e-mail, to:

- (a) Council, to the address on the Order; or
- (b) the Supplier, to its registered office, or if the Supplier has no registered office, its usual address.

16.2 A notice will be deemed to have been received:

- (a) if delivered, when it is left at the relevant address;
- (b) if sent by post, three days after it has been posted;
- (c) if sent by email, the time at which the email is sent to the correct email address.

17. Regulatory Capacity

17.1 To the extent that the Council has regulatory authority or powers (**regulatory capacity**), this Contract does not bind or fetter Council in its regulatory capacity.

17.2 The Supplier will not be entitled to any damages or other payment should Council, acting in its regulatory capacity, either decline any consent or permission, issue any consent or permission on terms that are unsatisfactory to any party or for any act or omission by Council in its regulatory capacity.

17.3

18. Interpretation

In this Contract:

Council means the Gisborne District Council.

Confidential Information includes the terms of the Contract (including the details of any Order), information highlighted by Council to the Supplier as being confidential and information that would reasonably be considered to be confidential, except information that is public knowledge.

Day means a day on which registered banks are open for business in Gisborne, excluding Saturdays and Sundays.

Delivery means, in the case of Goods, the delivery of the Goods to and/or the provision of the Services at a location nominated by Council.

Deliver has a corresponding meaning.

Goods means the goods, materials or substances specified in the Order and all parts or components of the same.

GST means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

Intellectual Property means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and – without limitation – includes inventions, discoveries and novel designs, whether or not registered or registerable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright)

throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright may subsist now or in the future; confidential information, trade secrets and trademarks, including service marks and trading names (whether registered or unregistered).

Order means an official Council purchase order which may be placed with the Supplier from time to time containing a reference to these terms and conditions.

Purchase Order Number means the number set out on the Order as relating to that particular purchase.

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

Supplier means the person, firm, company or corporate entity to whom Council issues an Order and/or with whom Council enters into the Contract.