

STANDARD TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND/OR SERVICES

The City of Mandurah (“City”) requires that the nominated supplier (“Supplier”) supply the City with the goods (“Goods”) and/or services (“Services”) specified in the City’s purchase order (“Purchase Order”) and the Supplier has agreed to provide the Goods and/or Services on the following Terms and Conditions.

1. Issue and Acceptance of Purchase Order

- 1.1. The Purchase Order is the City’s offer to the Supplier for the Supplier to supply the Goods and/or Services described in the Purchase Order to the City on the terms and conditions contained herein. Acceptance of the Purchase Order by the Supplier shall constitute a binding contract between the City and the Supplier to supply the Goods and/or Services specified in the Purchase Order on the terms and conditions contained herein (this “Agreement”).
- 1.2. This Agreement is to be read in addition to any terms specified in the Purchase Order and/or any attachment to it that is attached to, or expressly incorporated in writing. No other terms or conditions apply to this Purchase Order under any circumstances including, without limitation, the Supplier’s printed terms and conditions, and any terms and conditions contained in any Supplier’s quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, except where the City:
 - a) First provides its agreement in writing by an authorised representative; or
 - b) Enters into a longer form agreement on the City’s terms and conditions in which case the terms and conditions of that agreement will apply between the City and the Supplier.
- 1.3. If there is any conflict or inconsistency between the documents constituting the Agreement, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed:
 - a) The Purchase Order;
 - b) These standard terms and conditions; and
 - c) Any other document which is attached to, or incorporated by reference in, the Purchase Order or these terms and conditions.
- 1.4. The Supplier shall not provide Goods and/or Services to the City without first obtaining from the City a Purchase Order number and/or document:
- 1.5. The Supplier must ensure that the Purchase Order number is clearly marked on all delivery dockets, bills of lading, packages, invoices and other documents and correspondence relating to the supply of the Goods and/or the Services.
- 1.6. If the Supplier is unwilling or unable to accept the offer made by the City in the Purchase Order under the terms and conditions specified herein, the Supplier shall immediately contact the City and advise in writing of any variations it requests to be made by the City for the acceptance or rejection of the supply of the Goods and/or Services.
- 1.7. If the Supplier proceeds with the manufacture and/or supply of the Goods and/or Services without first requesting or receiving the City’s written acceptance of variations proposed by the Supplier, then the Supplier is deemed to have accepted the terms and conditions contained herein and the terms of the Purchase Order.
- 1.8. No addition to or modification of this Agreement will bind either of the parties unless it is made in writing and signed by both of them.

2. Warranties

- 2.1. The Supplier warrants that the Goods:
 - a) Shall be of merchantable quality;
 - b) Shall be manufactured and delivered strictly in accordance with any drawings, specifications and other instructions of the City given for the purpose of this Agreement;
 - c) Shall be free from defects in design, materials and workmanship;
 - d) Do not and will not infringe the intellectual property rights of any third party;
 - e) Shall comply with the requirements of any relevant statutes, regulations or legally applicable standards;
 - f) Shall be new on delivery to the City; and
 - g) Shall be in accordance with and shall perform in accordance with the Supplier’s technical specifications.
- 2.2. In addition to the provisions of clause 2.1, the Supplier warrants that the Services:
 - a) In relation to the performance of the Services:
 - i. The Supplier and its personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work;
 - ii. The Supplier has the necessary qualifications and licences required to perform the Services; and
 - iii. Any equipment used on site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent personnel, to the satisfaction of the City;
 - b) Will be in accordance with the City’s specifications (where those specifications are made known to the Supplier) or in the absence of such specifications, in accordance with any applicable standards set by the Standards Association of Australia;
 - c) Do not and will not infringe the intellectual property rights of any third party;
 - d) Shall comply with the requirements of any relevant statutes, regulations or legally applicable standards.
- 2.3. Without limiting any other provision of this Agreement, including this Section 2 or any other provision conferring rights or remedies on the City:
 - a) The Supplier agrees to provide the City the manufacturer’s warranty applicable to the Goods;
 - b) The Supplier must produce written evidence of the assignment to the City of the manufacturer’s warranty in respect of the Goods, or such other evidence sufficient to satisfy the City that it is legally entitled to the benefit of that manufacturer’s warranty.
- 2.4. The City relies on the Supplier’s skill and judgment. The Supplier undertakes to advise the City whenever the Supplier believes that compliance with a specification of the City may render the Goods and/or Services unsuitable for the City’s requirements.
- 2.5. All Goods and/or Services delivered or performed by the Supplier shall be subject to acceptance testing by the City and any Goods and/or Services tendered, offered or delivered which, in the opinion of the City, do not comply with this Agreement may be rejected by notice in writing to the Supplier.
- 2.6. The City may undertake such acceptance testing in respect of the Goods and/ or Services as it thinks fit.
- 2.7. Any Goods rejected by the City pursuant to clause 2.5 must be removed by and at the expense of the Supplier as soon as practicable after notice is given to the Supplier of their rejection. If the rejected Goods are not removed within that time, the City may either return them to the Supplier at the Supplier’s expense in all respects, or store them at the Supplier’s expense in all respects. The City will not be liable for any damage to or loss of the Goods whilst they are in transit to the Supplier, or whilst they are in storage.

- 2.8. The City may require the Supplier to refund any purchase price paid by the City for the Goods and/or Services and recompense the City for any loss suffered by the City in respect of Goods and/or Services rejected under clause 2.5.
- 2.9. Goods and/or Services (or any portion thereof) or replacement Goods and/or Services which have been rejected must not be offered again for acceptance under this Agreement. The City's acceptance of the Goods and/or the Services shall be without prejudice to any rights or remedies the City may have arising from any breach by the Supplier of this Agreement. In particular:-
- a) The City may reject the whole or any portion of the Goods and/or Services if it becomes aware (after accepting them) that they do not comply with this Agreement; and
 - b) The Supplier must not replace those Goods and/or Services under this Agreement unless a new purchase order is generated.
- 3. Price and Payment**
- 3.1. The price payable for the Goods and/or Services shall be that specified on the Purchase Order, unless such price is subject to alteration agreed in writing by the parties.
The price set out in the Purchase Order is all-inclusive and is the total amount payable by the City (subject to this Agreement) under this Agreement and (without limiting) includes all taxes, duties, charges, levies and fees payable on or in respect of the Goods and the Services. The City shall not be liable for additional costs or charges or an increase in price unless accepted by an authorised representative in writing prior to the specified delivery date of the Goods or prior to the specified commencement date of any Services involving such increased cost or charges or price.
- 3.2. The price specified in the Purchase Order shall include all packaging and transport charges.
- 3.3. Unless agreed upon in writing with the City, the Supplier must provide after the whole of the Goods and/or Services have been supplied an invoice which complies with the "A New Tax System (Goods and Services Tax) Act 1999" (and any legislation substituted for, replacing or amending that Act).
- 3.4. Unless otherwise agreed between the Supplier and the City in writing, amounts payable by the City pursuant to an invoice rendered in accordance with this Agreement shall be paid by the City no later than thirty (30) days from receipt of invoice provided that the Goods and/or Services have been accepted by the City and that the Supplier has complied with this Agreement in all respects. The City's accounts payable section must receive all invoices by the twenty-eighth (28th) day of each month in order for payment to be made in accordance with this clause. In the event that the City has a bona fide dispute in relation to the contents of any invoice issued by the Supplier then the City shall bring notice of such dispute to the attention of the Supplier within fourteen (14) days of receipt of the invoice. The City shall not be required to pay the invoice until the parties have reached agreement in relation to the dispute or until the Supplier has obtained a judgment against the City in respect of that amount (whichever occurs first).
In addition, the City may withhold payment of the amount charged for Services performed, or any instalment of that amount, if the Supplier's performance of the Services is unsatisfactory, or if the Supplier is in breach of this Agreement.
- 3.5. The tax invoice provided by the Supplier pursuant to this Agreement shall show the GST component charged by the Supplier as a separate amount.
- 3.6. If the Supplier does not provide its Australian Business Number (ABN) or has provided in lieu of an ABN, a Statement by the Supplier, on any invoice issued pursuant to this Agreement, then the City may withhold 49% of the payment and remit it to the Australian Tax Office (ATO) as required by legislation.
- 3.7. The City shall pay the Supplier by Electronic Funds Transfer to the Supplier's nominated bank account or as otherwise directed.
- 3.8. The City's preferred method of lodgment is electronically by email to the following email address: accounts@mandurah.wa.gov.au alternatively, invoices shall be mailed to the following address: City of Mandurah, Attention: Accounts Payable, PO Box 210, Mandurah WA 6210.
Under no circumstances shall the Supplier attach an invoice(s) to the goods being delivered nor hand deliver, fax, email or mail any invoice(s) to any other business / service unit than the City of Mandurah Accounts Payable service unit. Failure to comply with these requirements may result in the possible loss or misplacement of an invoice(s) and the subsequent delay in the payment of the account(s) for which the City shall not be deemed liable. No late payment penalty shall apply.
- 4. Delivery**
- 4.1. The Goods shall be delivered on the date specified in the Purchase Order and where the delivery date is not specified in the Purchase Order, as notified to the Supplier by the City, (the "Delivery Date"). The City may require that all Goods ordered for a specified Delivery Date is delivered at the same time or it may accept delivery in part from time to time, such acceptance to be completely within the City's discretion.
The Supplier must perform the Services for the City by no later than the date specified in the Purchase Order.
- 4.2. Subject to clause 5.2 and subject to the City's right to reject any defective Goods or Services, title shall pass to the City on delivery or its agent at the nominated place of delivery. The Goods will be deemed to have been delivered only when they have been delivered and unloaded at the nominated delivery point in accordance with the requirements of this Agreement.
- 4.3. The Supplier shall pack the Goods to ensure that no loss or damage results from weather or transportation.
- 4.4. The City shall specify the method of delivery required at the time of placing of the Purchase Order. Where the Supplier arranges transportation of the Goods, (regardless of whether the carrier is nominated by the City or not), risk remains with the Supplier until the Goods are delivered to the nominated place of delivery. Where the City nominates that delivery be made to a specific carrier, risk will pass on delivery of the Goods to such carrier.
- 5. Timelines**
- 5.1. Time is of the essence in the performance of the obligations under this Agreement. The Supplier acknowledges that the City may return part or all of any shipment of Goods received outside the Delivery Date and charge the Supplier with any loss or expense sustained as a result of the Supplier's failure to deliver as agreed. Without prejudice to the foregoing, if any circumstances arise which may delay the delivery of the Goods, the Supplier must immediately notify the City of the circumstances and propose a revised delivery date which the City may elect to agree or not agree to, at its own discretion. The exercise by the City of its rights under this clause shall be without prejudice to any claim for damages or other rights it may have against the Supplier.
- 5.2. The Supplier acknowledges that the City may terminate this Agreement if the Supplier does not provide the Goods and/or the Services within the date specified on the Purchase Order and the City shall not be liable to pay for any Goods and/ or Services which are delivered outside of the date specified on the Purchase Order (unless each of the parties have agreed in writing to extend the date).
- 6. Inspection**
- 6.1. On request and after being given reasonable notice, the Supplier shall arrange for the City's representative to have access to the premises or processes of the Supplier (or any of the Supplier's sub-contractors which the City has permitted to undertake works pursuant to this Agreement) for the purposes of inspecting any materials, Services, work in progress or finished Goods being supplied to or manufactured for the City.
- 6.2. Such inspection shall not be deemed to be acceptance by the City of the materials, work, Services or Goods inspected or affect any obligation of the Supplier under this Agreement.

7. Indemnities

- 7.1. The Supplier shall indemnify and keep indemnified the City from and against any liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature incurred by the City and arising directly or indirectly out of or in connection with:
- Any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Goods or Services hereunder and will assume the defence of any and all such suits and will pay all costs and expenses incidental thereto;
 - The failure of the Goods or Services to conform to or fulfil any term or condition of this Agreement; or
 - The Supplier's performance or non-performance (including the performance or non-performance of any of the Supplier's employees, contractors or agents) of this Agreement including claims for personal injuries, death and property loss or damage and the claims or liens of workmen or suppliers of goods, except where such injury, death, damage or loss arises solely from the willful misconduct of the City or the City's employees or agents.

8. Notices

- 8.1. Any notice in connection with this Agreement shall be deemed to be sufficiently given if delivered to either party personally or by forwarding the same to either party by pre-paid letter post, or addressed to or delivered at the registered office of the relevant party. E-mail notifications will be valid if they can be demonstrated to the satisfaction of the City to be reliable, accurate and authentic.

9. Site Work

- 9.1. Where the Supplier, its employees, contractors or agents:
- Provides work in connection with the installation or fitting of the Goods,
 - Perform Services, or
 - Where the Supplier, its employees, contractors or agents enter upon the City's premises, the Supplier shall, and shall procure that its employees, agents and contractors shall:
 - Perform all work in a proper and workmanlike manner and in strict accordance with any drawings, specifications and instructions;
 - Perform all work so as not to impede, or interfere with any activities being carried out on the City's premises;
 - Comply with the City's safety regulations and policies, relevant Australian Standards and the City's directions, and orders in regard thereto;
 - Provide at their own expense (except where otherwise specified) all labour, tools, equipment and material necessary to complete the work; and
 - Enter upon the City's premises at their own risk.

10. Defects Liability Period

- 10.1. For Agreements for the supply and installation of Goods and/or the supply of Services, the Supplier, at its cost, if required to do so by the City, shall rectify any omission or defect in the Goods and/or the Services under this Agreement existing at the date of completion or which becomes apparent prior to the expiration of the Defects Liability Period.
- 10.2. Unless otherwise agreed, the Defects Liability Period shall be a period of twelve (12) months from the date of completion of work under this Agreement.
- 10.3. If the work of rectification is not commenced or completed as required by the City, the City may have the work of rectification carried out at the Supplier's expense but (without prejudice to any other rights) the City may have, and the cost of rectification incurred by the City shall be a debt due from the Supplier.

11. Insurance

- 11.1. Before the Supplier commences the supply of Goods or Services, the Supplier shall obtain insurances as set out in the request documentation, or in the absence of which, adequate and sufficient insurance to protect the interests of the Supplier and the City under this agreement, including, public and products liability insurance and workers' compensation insurance. The Supplier shall maintain such insurances for the duration of this Agreement, and if necessary thereafter for such time as is reasonable.
- 11.2. The Supplier shall effect and maintain any other insurances as the City may reasonably instruct, including, professional indemnity insurance or any other insurance.
- 11.3. The Supplier must produce on demand by the City, evidence satisfactory to the City that the insurances referred to in clauses 11.1 and 11.2 have been obtained and are being maintained by the Supplier. If the Supplier fails to produce such evidence, the City may itself effect the insurance and the premium of such policies shall be a debt due and owing from the Supplier to the City.
- 11.4. If the City requests evidence of insurance from the Supplier under clause 11.3, no money shall be payable to the Supplier under this Agreement until such time as the request under clause 11.3 has been complied with by the Supplier.

12. Termination

- 12.1. Without prejudice to any other rights and remedies it has under the Agreement or otherwise, the City may, at any time, by written notice to the Supplier, terminate the Agreement.
- 12.2. The City may forthwith terminate this Agreement by notice in writing if the Supplier is in default of any term or condition of this Agreement.
- 12.3. The City may, without prejudice to any other rights or remedies hereunder, forthwith terminate this Agreement by notice in writing if the Supplier:
 - Stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
 - Is insolvent within the meaning of the *Bankruptcy Act 1966* or the *Corporations Act 2001*;
 - Must be presumed by a court to be insolvent by reason of the *Bankruptcy Act 1966* or the *Corporations Act 2001*;
 - Has an administrator appointed over all or any of its assets or undertaking;
 - Has a controller within the meaning of section 9 of the *Corporations Act 2001* or similar officer appointed to all or any of its assets or undertaking; or
 - Has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its bankruptcy, winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them and any such application, order or proceeding is not withdrawn within twenty-one (21) days.
- 12.4. If Goods to be supplied under this Agreement are of standard stock of the Supplier, then the City may terminate this Agreement upon written notice to the Supplier, so far as it relates to any unshipped or undelivered portion of Goods without further obligation hereunder, except payment (subject to the other terms hereof) for the Goods shipped or delivered prior to termination.
- 12.5. If this Agreement requires Goods and/or Services to be manufactured to the City's specification or requires the Supplier to install or fit Goods, then at any time prior to completion of the work to be performed in fulfilment of this Agreement, the City may terminate this Agreement upon written notice to the Supplier, and upon receipt of such notice the Supplier shall stop all work hereunder, except as may be otherwise directed by the City. Upon termination under this clause 12.5, the City shall pay to the Supplier an amount equal to:

- a) The completed pro-rata amount of the purchase order price; and
- b) Five percent (5%) of the amount calculated in (a).

The amount described in paragraph (a) shall be agreed (in writing) by both parties and shall reflect the amount completed or committed at the date of termination provided that at such date the Supplier is not in breach of any of these terms or conditions, and provided further that such amount shall not exceed the total purchase order price nor provide for any amount for anticipated profit for performance not rendered or for any amount for consequential loss or damage.

12.6. Termination of this Agreement does not affect any accrued rights or remedies of either party.

13. Breach

13.1. If the Supplier breaches this Agreement, or if it advises the City that it is not or will not be able to perform all or any of its obligations under this Agreement, then without limiting any other right or remedy the City may;

- a) If it is permitted to do so under this Agreement, terminate this Agreement by notice in writing to the Supplier; and/or
- b) Acquire the Goods and/or Services (or their nearest reasonably available substitute) from a third party(s).

13.2. Any additional cost to the City of acquiring substitute Goods and/or Services from a third party will be an amount due by the Supplier to the City immediately upon the City making demand for that amount. The Supplier must pay to the City the whole of any cost or expense, loss or damage suffered or incurred by the City as a result of the Supplier's breach of this Agreement.

14. Intellectual Property Rights

14.1. Where this Agreement includes the provision of Services involving the preparation or provision of any design, formula, specification, reports or drawings, the Supplier agrees to assign to the City absolutely:

- a) The copyright subsisting in any work created by the Supplier or any of its employees, agents or contractors in the course of the Services and which is the subject of copyright; and
- b) All rights in respect of any practice, concept, product, and process design the Supplier or any of its employees, agents or contractors creates, develops, discovers or first reduces to practice in the course of the Services and in respect of which intellectual property rights are capable of being protected or registered.

The Supplier agrees to sign all documents and do all acts and things necessary to ensure that legal ownership of copyright and other intellectual property rights vests in the City.

14.2. Any design, formula, specification, drawings or other documents or information made available by the City for use by the Supplier for the purposes of this Agreement always remains the property of the City. This Agreement does not give the Supplier any right, title or interest in the City's documents or information and the Supplier must use the City's documents and information solely for the purpose of providing the Goods and/or Services to the City under the terms of this Agreement.

15. Moral Rights

15.1. To the extent permitted by laws and for the benefit of the City, the Supplier consents, and must use its best endeavours to ensure that each author of a work consents in writing, to the use by the City of that work even if the use may otherwise be an infringement of their Moral Rights.

16. General

16.1. This Agreement is confidential to the City and neither its terms nor any particulars or any information relating to it may be published or disclosed to any third party by the Supplier (except to the extent necessary for the purposes of this Agreement) without the City's prior written consent. This obligation of confidentiality shall survive the termination of this Agreement.

16.2. This Agreement shall be governed by and construed according to the laws of Western Australia and the parties shall submit to the jurisdiction of the Courts of Western Australia.

16.3. A party will effectively waive its rights under this Agreement only if it waives those rights in writing signed by that party.

16.4. The Supplier shall not directly or indirectly sub-contract or assign this Agreement or any of its rights or obligations under this Agreement or any part of this Agreement without obtaining the City's prior written consent which may be granted unconditionally or upon such conditions as the City thinks fit and may be withheld by the City in its absolute discretion.

The appointment of subcontractors by the Supplier shall not relieve the Supplier from any liability or obligation under this Agreement. The Supplier shall be liable for the acts and omissions of subcontractors and employees, officers, agents and contractors of subcontractors as if they were acts and omissions of the Supplier. The Supplier shall ensure that its subcontractors comply with the terms of this Agreement.

16.5. The Supplier performs all work hereunder as an independent contractor and not as an agent or employee of the City.

16.6. The Supplier will maintain a true and correct set of records in connection with the Goods and/or Services and all related matters for a period of not less than Twenty Four (24) months after the date of completion of the Goods and/or Services, unless specified that the records are required to be maintained for a further period.

16.7. The City is committed to operating in a sustainable manner. As such, the City requires that the environment, social and economic impacts of Goods and/or Services are considered for all items designed, supplied and constructed for the City. All items shall be in accordance with all relevant legal requirements including but not limited to the *Environmental Protection Act 1986 Part 5*, Australian Standards and Industry Codes of Practice and the City's Occupational Safety and Health Policy.

16.8. The Supplier shall conform with the provisions of all laws (Federal, State or Municipal) in any way affecting or applicable to the manufacture and/or supply of the Goods and/or Services and shall obtain all permits and licences and give all notices required to be given and shall pay all fees, deposits and taxes in connection therewith.

16.9. If the City is restructured by Law, then the rights and obligations of the City under the Agreement are assigned to and assumed by the appropriate legal entity as determined by the City or the successors of the City under the restructure.

16.10. The Terms and Conditions which form part of the Agreement may from time to time be amended, updated, supplemented or replaced by the City.