

## **Standard Terms and Conditions - Purchase of Goods and Services (Purchase Order) - Thames-Coromandel District**

### **1. Definitions**

- 1.1. "Deliverables" means the Goods and/or Services to be supplied by the Supplier to TCDC as identified in the Purchase Order.
- 1.2. "Delivery" means in the case of Goods, the delivery of the Goods in good order and condition at TCDC's premises or such other location specified in the Purchase Order, and in the case of Services, means the provision of the Services to TCDC's satisfaction at TCDC's premises or such other location specified in the Purchase Order.
- 1.3. "Delivery Date" means the date specified in the Purchase Order for Delivery of the Goods and/or Services;
- 1.4. "Goods" means all goods, materials, equipment, parts and any other ancillary activity provided by the Supplier to TCDC identified in the Purchase Order.
- 1.5. "GST" means the goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.
- 1.6. "Purchase Order" means the Purchase Order submitted by TCDC to the Supplier to purchase Deliverables.
- 1.7. "Services" means all the services provided by the Supplier to TCDC identified in the Purchase Order.
- 1.8. "Supplier" means the person supplying the Goods or performing the Services as identified in the Purchase Order.
- 1.9. "TCDC" means Thames-Coromandel District Council.
- 1.10. "TCDC Contract" means any separate contract entered into by TCDC and the Supplier for the purchase of Deliverables as referenced in the Purchase Order.
- 1.11. "Working Days" means any day other than a Saturday, Sunday or a Public Holiday (as that term is defined in the Holiday Act 2003) and/or any day in the period commencing on the 21st day of December in any year and ending on the 7th day of January in the following year.

### **2. Entire Agreement**

- 2.1. The Purchase Order, incorporating these terms and conditions, and any TCDC Contract comprises the entire agreement between TCDC and the Supplier and supersedes all prior agreements, undertakings, representations, warranties or arrangements.

### **3. Precedence of Documents**

- 3.1. Unless otherwise stated, in the event of inconsistency the order of precedence of the following documents shall apply:
  - 3.1.1. the TCDC Contract, if any;
  - 3.1.2. the Purchase Order;
  - 3.1.3. these terms and conditions; and
  - 3.1.4. any other attached drawings or documents.
- 3.2. The Purchase Order, and/or TCDC Contract (if any) take precedence over the provisions of any terms of supply or sale of the Supplier.

### **4. Alterations/Variations**

- 4.1. Alterations or variations to the Purchase Order, these terms and conditions or any other attached drawings or documents shall not be legally binding upon TCDC or the Supplier unless agreed in writing by the parties.

### **5. Price and Payment**

#### **5.1. Price**

- 5.1.1. If a price is specified in the Purchase Order, it cannot be changed without written consent from both TCDC and the Supplier. If no price is specified, it must be agreed upon by both parties before delivery.
- 5.1.2. Unless otherwise agreed, any specified or subsequently agreed-upon price is fixed, including all related expenses of the Supplier.
- 5.1.3. Any specified or agreed-upon price excludes GST, with parties acknowledging their GST registration requirements as applicable..

#### **5.2. Payment Terms**

- 5.2.1. Payment by TCDC will be made after:
  - 5.2.1.1. the receipt by TCDC of a Supplier's correctly rendered tax invoice by TCDC in accordance with clauses 5.2.2 and 5.2.3, and
  - 5.2.1.2. the receipt and acceptance of the Deliverables by TCDC.
- 5.2.2. A correctly rendered invoice must include, as a minimum, the specified or agreed-upon price, the suppliers GST number, the Purchase Order number, the TCDC Contract number (if any) and any other information necessary to enable TCDC to identify the Deliverables subject to the invoice.
- 5.2.3. All Invoices must be emailed to [accounts.payable@tcdc.govt.nz](mailto:accounts.payable@tcdc.govt.nz) for payment.
- 5.2.4. Payment by TCDC will be made on the 20th day of the month following the month in which the requirements of clause 5.2.1 have been met.

5.2.5. TCDC reserves the right to return to the Supplier any invoices not deemed by TCDC to be correctly rendered and retains the right to set off any moneys payable to the Supplier against any sums owed by the Supplier to TCDC.

5.3. If TCDC disputes an amount in an invoice, the amount disputed will not become due and payable by TCDC until the dispute is resolved.

6. **Acceptance**

6.1. TCDC may carry out any reasonable or agreed acceptance testing of any Goods and Services.

7. **Delivery, Risk and Title**

7.1. The Supplier is responsible for the Delivery and all costs (including insurance) associated with the Delivery of the Deliverables.

7.2. Subject to TCDC's right to reject or return any Goods, title to and property in the Goods free from any encumbrances immediately passes to TCDC on the earlier of payment in accordance with clause 5.2 or Delivery.

7.3. Risk in the Goods remains with the Supplier until Delivery to TCDC.

8. **Delays**

8.1. If it ever appears that the provision of Deliverables will not be met by the Delivery Date specified in the Purchase Order, the Supplier must immediately notify TCDC of any anticipated delay. In the event of delay TCDC reserves the right to terminate the Purchase Order (without compensation to the Supplier).

9. **Warranty**

9.1. The Supplier warrants (as a continuing representation and warranty) that the Deliverables:

9.1.1. will be complete and free from any defect;

9.1.2. are suitable and fit for the purpose intended;

9.1.3. are new and are of merchantable quality or such quality as specified in the Purchase Order; and

9.1.4. in respect of Services, conform to the Purchase Order requirements and any specifications and all applicable laws and regulations.

9.1.5. will be free of any charge to a third party;

9.2. These warranties are in addition to any statutory warranties applicable to the Deliverables.

9.3. If any part or aspect of the Goods fail or becomes defective within 12 months from the date the Goods were delivered to TCDC, the Supplier must without delay and at no cost to TCDC do all things necessary to remedy the defect or failure in the Goods. This can be by way of replacement, modification, repair or other means acceptable to TCDC. If the Supplier does not do so, within a reasonable period following notice of the defect from TCDC, then TCDC will have the right to remedy the defect and recover costs so incurred (including any professional fees) from the Supplier.

9.4. If, during the term of the Purchase Order, and a further term of 12 months following completion of Services, TCDC is of the view that the Services do not comply with the requirements of the Purchase Order then TCDC may require the Supplier to re-perform the Services at the Supplier's cost within such time as TCDC reasonably may request.

10. **Liability and Indemnity**

10.1. The Supplier must indemnify, and keep indemnified, TCDC and its officers, employees, contractors and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses, whether direct or indirect, suffered by TCDC and its officers, employees contractors and agents arising from any act, omission, neglect or fault (including any negligence) of the Supplier, its officers, employees contractors and agents related to its obligations under the Purchase Order.

10.2. TCDC will not be liable to the Supplier for any indirect or consequential loss or damage suffered by the Supplier as a result of any breach by TCDC of its obligations under the Purchase Order.

10.3. TCDC's liability to the Supplier arising under the Purchase Order is limited to the price payable for the Deliverables.

11. **Insurances**

11.1. In relation to Services, the Supplier shall take out and maintain with a New Zealand insurer of good repute:

11.1.1. comprehensive public liability insurance with a limit of not less than \$2,000,000 per claim;

11.1.2. insurance covering the Suppliers own property, equipment, materials owned, hired leased or used by the Supplier for the purpose of this Purchase Order; and

11.1.3. any additional insurance required by any applicable law.

11.2. In relation to professional Services, in addition to 11.1 above, the Supplier shall hold and maintain with a reputable insurer professional indemnity insurance with a limit of not less than the limit of liability under clause 11.1.1.

11.3. In relation to Goods, the Supplier shall take out and maintain any policies of insurance specified in the Purchase Order or required by law.

11.4. The Supplier will at the request of TCDC provide copies of all certificates of currency in respect of the insurances required to be taken out by Supplier under this clause.

**12. Health and Safety**

12.1. When providing Deliverables to TCDC the Supplier acknowledges that they shall comply with all requirements of the Health and Safety in Employment Act 1992, including any regulation, amendment or replacement to that statute or regulation, whether by subsequent statute or otherwise.

**13. Force Majeure**

13.1. Neither the TCDC nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of the Purchase Order caused by any occurrence beyond its reasonable control including, without limitation, pandemic, fire, strike (except where it involves a party's own labour force), disturbance, riot, war, act of god and government order or regulation, provided that the party affected by such occurrence notifies the other party in writing within five (5) Working Days of the commencement of that occurrence. When the party ceases to be affected by the force majeure event it must immediately recommence performing its obligations under the Purchase Order and notify the other party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Deliverables is delayed more than thirty (30) days after the Delivery date specified in the Purchase Order TCDC may, without penalty and compensation to the Supplier, cancel the Purchase Order.

**14. Disputes**

14.1. TCDC and the Supplier shall attempt to quickly and amicably settle any disputes or differences that may arise. In the event that any such disputes or differences cannot be negotiated and amicably resolved between the parties within fifteen (15) Working Days after the dispute was first raised, then either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator agreed and appointed by the parties, and failing agreement, nominated by the Arbitrators and Mediators Institute of New Zealand. Each party shall bear its own costs in relation to the mediation and shall pay the costs of the mediator in equal shares.

14.2. Neither party may issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken reasonable steps to comply with clauses 14.1

14.3. If the discussions or mediation referred to in clause 14.1 fail to resolve the relevant dispute or differences then either party may refer it for final determination by the courts.

14.4. In the event of and during any unresolved dispute the Supplier must ensure the continued progress of achieving the Deliverables.

**15. Termination**

15.1. If Goods have been offered by the Supplier as, or if they are, standard or stock items TCDC can, by notice to the Supplier, at any time up to Delivery cancel the commitment to buy them. Any other commitment of TCDC to receive and pay for Deliverables that are not standard or stock items may be cancelled by TCDC and in such instances TCDC will reimburse the Supplier for all reasonable irrecoverable costs directly incurred by the Supplier up to the point of cancellation.

15.2. TCDC may suspend performance of, or cancel, or suspend and then at any subsequent time cancel, the Purchase Order without any liability to the Supplier if the Supplier breaches the terms of the Purchase Order, or if the Supplier's business fails. The Supplier's business will be treated for this purpose as having failed if:

15.2.1. the Supplier makes any voluntary arrangement with its creditors;

15.2.2. (being an individual or firm) Supplier become bankrupt;

15.2.3. (being a company) Supplier becomes subject to an administration order or goes into liquidation;

15.2.4. any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;

15.2.5. the Supplier stops or threatens to stop carrying on business;

15.2.6. the Supplier suffers any process equivalent to any of these, in any jurisdiction; or

15.2.7. TCDC reasonably believes that any of the events mentioned above is likely to occur and TCDC notifies the Supplier accordingly.

15.3. A party (affected party) may immediately terminate this agreement where the other party breaches any material obligation, term or condition of this Purchase Order and fails to remedy that default within ten (10) Working Days of receiving a notice (from the affected party) requesting it remedy the breach.

15.4. Any right of cancellation or suspension under this section is additional to any rights available to TCDC under the law of any relevant jurisdiction.

**16. Confidentiality**

16.1. Any information provided by TCDC to the Supplier which is marked as confidential, or the Supplier ought reasonably to know is confidential, must not be disclosed to any third party by the Supplier without the prior written consent of TCDC or used by the Supplier other than for the purpose of satisfying the Supplier's obligations under the Purchase Order. The parties agree that this obligation shall survive termination or expiration of the Purchase Order.

**17. Intellectual Property & Branding**

- 17.1. TCDC and the Supplier agree that all intellectual property rights owned by either party and existing prior to commencement of the supply of the Deliverables will remain the exclusive property of that party.
- 17.2. The Supplier agrees that all intellectual property rights created by the Supplier or its employees, subcontractors or agents in the course of supplying the Deliverables will be the exclusive property of TCDC.
- 17.3. The Supplier will not use any TCDC trade mark, service mark, logo or other brand identifier (each a TCDC brand) without the prior written approval of TCDC.
18. **Waiver**
- 18.1. No failure or delay on the part of TCDC in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.
19. **Subcontracting and Assignment**
- 19.1. The Supplier is not permitted to assign or subcontract all or any part of its obligations under the Purchase Order without the prior written consent of TCDC.
20. **Compliance with and Governing Laws**
- 20.1. The Supplier warrants that it and its employees, agents and subcontractors, when providing the Deliverables, will comply with all relevant and applicable laws, regulations and policies.
- 20.2. The Supplier warrants that it and its employees, agents and subcontractors will comply with all TCDC rules and policies, if any, which apply to the supply of the Deliverables.
- 20.3. Unless otherwise specified, the Purchase Order will be governed and construed in accordance with the law of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.
21. **GST**
- 21.1. All monetary amounts in the Purchase Order are stated exclusive of GST and in New Zealand dollars, unless provided otherwise.
22. **Non-exclusivity & Relationship**
- 22.1. The Purchase Order, or these terms and conditions, do not confer on the Supplier any right to be a sole or exclusive supplier of the Deliverables to TCDC or create any partnership, agency or employer/employee relationship.
- 22.2. The Supplier is an independent contractor and must exercise independent control, management and supervision in the performance of the Purchase Order. The Supplier is not TCDC's agent, partner or employee. The Suppliers' personnel will not under any circumstances be considered employees of TCDC for any purpose.
- 22.3. The Supplier acknowledges that where TCDC acquires Deliverables as a consumer (as that term is defined in the Consumer Guarantees Act 1993), then that Act applies to the acquisition of the Deliverables.
23. **Notices**
- 23.1. A notice under the Purchase Order is treated as having been duly given and received when:
- 23.1.1. if in writing, delivered to the other party's address;
- 23.1.2. if sent by email, on the day following transmission of the email.
- 23.2. The addresses of the parties are those held by TCDC.