

1. Purchase Order Terms and Conditions

These conditions together with any request for quotation, specification and special conditions provided by the Town in connection with the supply of the goods or services ("the Contract Documents") and this purchase order shall constitute the contract documents and the entire terms of the Agreement.

1.2. Terms of reference

Principal: Officer of the Town of Mosman Park (the Town) acting as a representative of the Town with regards to the purchasing arrangement

Supplier: Business providing goods or services to the Town

2. The General Scope of Purchase Order Contract

This Purchase Order requires the Supplier to:

2.1 Supply goods or services as nominated as to sizes, quantities and types;

2.2 Ensure that the goods or services delivered comply with the quality, size and nature specified in any Contract documents or correspondence agreed by the Town's representative officer.

2.3 Supply the same for the amount or at the rates of charge referred to in this Purchase Order;

2.4 Are in accordance with relevant Australian Standards or, where no Australian Standard exists, any relevant ISO Standard;

2.5 Comply in all respects with the Contract Documents (if applicable) concerning the sale, supply, delivery and payment of goods and services on this Purchase Order;

2.6 No goods will be paid for, received or acknowledged without the issue to the Supplier of an official Purchase Order; and

2.7 Provide the Town with a compliant tax invoice that complies with the relevant tax legislation.

2.8 If at the written request of the Principal the Supplier provides goods or services additional to the initial goods or services requested, the Principal shall pay the Supplier in respect of such additional work at the rate provided for in the Letter of Engagement or if no such rate is specified then at the rate agreed between the Principal and the Supplier.

3. Delivery

This Purchase Order requires the Supplier to:

3.1 Delivery shall be made to such locations and at such time as shall be nominated by the Town in this purchase order.

3.2 Obtain the signature of a member of the Principal's Personnel who receives delivery of the goods; and where it is not possible to satisfy 3.2, leave the goods where requested by the Principal.

3.3 Upon delivery the goods shall be accompanied by a delivery document with the Town's purchase order number nominated thereon. A separate tax invoice shall be sent to the Town as soon as possible which shall state clearly the contents of the delivery, pricing including freight costs, and the Town's purchase order number and the requesting officer's details.

3.4 The price shall be inclusive of all freight insurance and other charges in or in connection with the forwarding of the goods or services to the Town.

3.5 All elements of the goods or services delivered by the Supplier shall be at the risk of the Supplier and no liability to pay for them shall arise until that element of the goods or service are approved by the Town and delivery is accepted in writing or by counter-signature.

3.6 Should the supplier be at fault in the completion of a service or delivery as specified, upon return of any such element of the goods which are not acceptable to the Town the Supplier shall reimburse the Town for:

(a) Any amounts paid by the Town on account of the price of the returned elements of the goods; and

(b) Any costs incurred by the Town in connection with the delivery or return of the relevant element of the returned goods.

3.7 The Supplier acknowledges that the Town 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 Town 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).

4. Acceptance of Goods

All goods are accepted subject to checks and inspection with the Town reserving the right to return any faulty or unsuitable item(s) and withhold payment for the returned items.

The Town is only obliged to accept delivery of such goods or services that comply with the Purchase Order or Contract Documents.

All freight, insurance and other charges whatsoever in connection with the return of the goods or services and the delivery of a further supply of the goods or services shall be paid and borne by the Supplier.

5. Warranty

The Supplier warrants that all goods and services provided to the Town:

5.1 Conform to the relevant description of the same contained in the Contract Documents or Purchase Order;

5.2 Shall be of good merchantable quality and for the known purpose for which they are sold;

5.3 Are new (unless otherwise specified); and

5.4 Are free from all liens and encumbrances and the Supplier has a good marketable title thereto; shall be delivered by the due delivery date specified on this purchase order.

These warranties are in addition to any warranty or guarantee provided by the Supplier in respect of the relevant element of the goods or services or implied by law.

6. General Matters and Definitions

6.1 Unless otherwise provided all references to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities, dimensions and units shall be in terms of Commonwealth legal units.

6.2 The Supplier shall indemnify and keep indemnified the Town 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 Town and arising directly or indirectly out of or in connection with:

(a) Any claim or suit for alleged infringement of patents or copyright relating to any use or sale of goods or;

(b) The failure of the goods or services to conform to or fulfil any term or condition of this Agreement; or

(c) 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 wilful misconduct of the Town or the Town's employees or agents.

6.3 The Supplier shall ensure that its supply and delivery of the goods or services satisfies all of the requirements of all relevant Western Australian and Commonwealth Acts of Parliament and all ordinances, regulations, by-laws, orders and proclamations made that are relevant to the purchase.

6.4 All works items materials or information of whatever nature produced or developed by the Supplier or under the direction of the Supplier pursuant to or in the course of providing the goods or services shall be and become the sole and complete property of the Principal whether such property is tangible or is in the nature of industrial or intellectual property rights (including copyright and rights of confidential information). The Supplier shall not use any such works, items, materials or information otherwise than for the purpose of providing the goods or services hereunder without the prior written consent or license of the Principal first had and obtained. The Supplier shall supply native software format digital copies of all information and documents to the Town as part of the deliverables where applicable.

7. Assignment

The Supplier shall not, without the prior written approval of the Town, assign the Contract or assign, mortgage, charge, encumber any of the moneys payable under this Purchase Order.

8. Insurance

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

(a) Goods; Transit and Material Damage Insurance (including freight and other charges), up until title and risk in the goods pass to the Town; and

(b) Where this Agreement includes the provision of services which includes the giving of professional advice or instruction, design, formula or specification, the Supplier must effect and maintain throughout the term of this Agreement and for a period of not less than three (3) years after termination of the Agreement or completion of the Supplier's obligations under the Agreement, Professional Indemnity insurance with a minimum cover of not less than five (5) million dollars (\$5,000,000) for any one claim.

9. Goods and Services Tax

For the purposes of this clause:

- (a) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
- (b) "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
- (c) "Supply", "taxable supply" and "tax invoice" have the same meanings as in the GST Act.

Where the supply of the Services or any part thereof is a taxable supply under the GST Act:

- (a) The Price shall be inclusive of all applicable GST at the rate in force for the time being.
- (b) The obligation of the Principal to pay the Price, or any instalment thereof, and the right of the Supplier to recover the Price, or any instalment thereof, shall be subject to and conditional upon the prior issue by the Supplier and the prior receipt by the Principal of a tax invoice in respect of

the Price, or the relevant instalment thereof, which complies in all respects with the GST Act.

- (c) This provision applies notwithstanding any other provision of these conditions or any legislation or rule of law to the contrary, but does not apply if the Supplier is not registered for GST, and is not required to be so registered, under the GST Act.

The Supplier shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Services under these conditions and the Letter of Engagement.

10. Terms of Payment

The Town shall pay the Price to the Supplier as soon as practicable on receipt of Invoice subject to:

9.1 The Price being in accordance with the Contract Documents;

9.2 The Goods and/or Services being received and accepted by the Town as satisfying the Purchase Order Specification or Contract Documents;

9.3 A correct purchase order number being quoted on the tax invoice; and

9.4 Subject to any right of the Town to retain, withhold, reduce or set-off any amount due to the Supplier, the Town must pay all Invoices that comply with this purchase order contract within 28 days (or such other period as the Town's Representative and Supplier agree) of the invoice date (as the case may be).

11. No Waiver

No failure or delay on the part of a party to exercise any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or exercise of any right or remedy.