

Sutherland Shire Council Purchase Order - Standard Terms and Conditions

1. Interpretation and General Matters

1.1 Definition and Interpretations

"Day" means calendar day.

"Goods" means all goods and services, equipment, materials, articles, or any other property or parts to be provided to the Council by the Supplier under the Purchase Order and includes, without limitation, all services including design, manufacture, inspection, testing, expediting, quality assurance and control, painting, packing and delivery as specified or required under this Purchase Order.

"GST" means the tax introduced by *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the "GST Act") and its associated legislation and regulations.

"Intellectual Property Rights" means all present and future intellectual and industrial property rights conferred by law and wherever existing, including:

- (a) patents, designs, copyright, trademarks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b) of this definition;
- (d) renewals and extensions of these rights, including moral rights (as defined in the *Copyright Act 1968*) if any.

"Purchase Order" means the purchase order issued by the Council to the Supplier as evidenced by the documents listed in the Purchase Order Form.

"Purchase Order Form" means the section of the Purchase Order to be completed by the Council, which identifies the Council and the Supplier and includes but is not limited to a brief description of the Goods and a list of the documents comprising the Purchase Order.

"Council" means Sutherland Shire Council.

"Supplier" means the person providing the Goods, as identified in the Purchase Order Form.

"Warranty Period" means the period commencing on the date of final supply of the Goods and lasting for a period of 12 months, unless otherwise stated in the Purchase Order.

1.2 Exclusion of other terms

These terms and conditions are the sole terms and conditions in relation to the Purchase Order for the Goods (subject to any express statement to the contrary on the Purchase Order Form) and any other terms and conditions are expressly excluded other than a separate written agreement which will continue to be in force as well as these conditions and Council will determine the resolution of any ambiguity or inconsistency at its discretion. The Supplier warrants and acknowledges this fact by continuing to perform and supply under the Purchase Order.

1.3 Supplier to inform itself

The Supplier shall be deemed to have carefully examined all documents furnished by the Council and fully satisfied itself regarding all the conditions, risks, contingencies and other circumstances which might affect the supply of the Goods.

1.4 Confidentiality

Any information provided by the Council to the Supplier that is noted as, or the Supplier should know is, confidential shall not be disclosed to any third party without the prior written consent of the Council. This obligation shall be continuing obligations and shall survive the completion or termination of the Purchase Order.

1.5 Waiver

No failure or delay on the part of the Council in exercising any of its rights under the Purchase Order shall be construed as constituting a waiver of any such rights.

1.6 Subcontracting and Assignment

The Supplier shall not subcontract nor assign all or any part of the Purchase Order without the prior written approval of the Council. Approval of the Council to any subcontract shall in no way relieve the Supplier of any of its obligations under the Purchase Order.

1.7 Communications

Any notice or other communication required under the Purchase Order shall be delivered in writing and shall be in a form which can be read, copied and recorded conveniently. Verbal instructions or directions from the Council shall be confirmed in writing to the Supplier within a reasonable time. The notice shall take effect from the time when it is delivered to or received at the nominated address of the parties. For the avoidance of doubt, an email is in writing.

1.8 Licences and Laws

The Supplier shall comply with all applicable laws, by-laws, ordinances, regulations, proclamations, orders and rules and with the lawful requirements of Public and other Authorities in any way related to the supply of the Goods. Unless otherwise specified, the Purchase Order shall be governed and construed in accordance with the laws in place in the State of New South Wales.

2. Performance and Quality

2.1 In addition to any warranties implied by law, the Supplier warrants that:

- (i) the Goods are free from defects in material and workmanship and are of merchantable quantity;
- (ii) it has the right to provide the Goods;
- (iii) the Goods are free from any charge or encumbrance in favour of any third party not declared or known to the Council before or at the time the Purchase Order is made;
- (iv) the Goods are of the description and quality specified in the Purchase Order;
- (v) the Goods are fit for purpose for which they are required. The Supplier shall use new and undamaged materials, unless otherwise specified in the Purchase Order and the workmanship shall be of the highest quality and standard. The work shall be carried out in accordance with good engineering practice and comply with all applicable Australian Standards and/or other referenced codes, the requirements of the relevant Statutory Authorities and the Law;
- (vi) the Supplier represents and warrants to the Council that it has the necessary skills, resources and experience to successfully supply the Goods in accordance with the requirements of the Purchase Order;
- (vii) the Goods must be tested in accordance with the requirements of any specification. Unless otherwise set out elsewhere in the Purchase Order, any tests and the costs thereof shall be the responsibility of the Supplier. The results of tests shall be promptly supplied to the Council in writing;
- (viii) the Council shall have the right to inspect, expedite and monitor the Goods upon delivery and if it chooses to do so the Goods will not be accepted by the Council until inspected and approved by the Council. Any inspection by the Council shall not relieve the Supplier from its obligations to comply with the requirements of the Purchase Order and shall in no way impair the Council's right to require subsequent correction of non-conforming Goods;

- (ix) the Goods comply with all applicable Australian standards and legislation;
- (x) the Goods do not infringe any patent, registered design, trademark or name, copyright or any other protected right; and
- (xi) the Goods are free from liens, charges, encumbrances, mortgages or other defects in title, including any Security Interest or Purchase Money Security Interest as defined by the *Personal Property Securities Act 2009* (Cth).

For the avoidance of doubt the Council may treat any breach of the warranties in this clause 2 by the Supplier as a repudiation of the Purchase Order.

3. Defects

- 3.1 During the Warranty Period, the Council shall give written notice to the Supplier of any failure or defect in the Goods. The Supplier shall without delay and at no cost to the Council, correct any defect or failure in the Goods covered by the warranty, by way of repair, replacement, modification or other means acceptable to the Council.
- 3.2 If the Supplier fails to correct any defects and failures, of which it has been notified by the Council, within the time specified in the notice (which shall not be unreasonable), the Council shall have the right to rectify the Goods itself or have the rectification undertaken by a third party. All costs so incurred shall be a debt due and payable by the Supplier or deducted from moneys otherwise owing to the Supplier. Any Goods repaired under warranty may be subject to a further full Warranty Period, if required by the Council, commencing on the date of completion of any such repair.

4. Third Party Warranty for Goods

- 4.1 The Supplier will ensure that any warranty offered by a manufacturer of the Goods (or otherwise) is enforceable by the Council.
- 4.2 A third party warranty for Goods offered by a manufacturer of the Goods (or otherwise) shall not be limited by the Warranty Period.

5. Delivery

- 5.1 Unless otherwise specified in the Purchase Order, the Goods shall be delivered adequately packaged and protected to ensure safe delivery, to the delivery point and by the delivery date(s) specified in the Purchase Order Form. The Goods shall be accompanied by a delivery docket which shall be signed by a duly authorised representative of the Council at the point of delivery.
- 5.2 The Council may reject the Goods if the Purchaser believes the Goods are defective, do not comply with the warranties specified in clause 2 or any of the obligations under this Purchase Order. The Council may unpack, inspect and test the Goods for this purpose.
- 5.3 The Goods shall become the property of the Council upon delivery of the Goods to the Council, as evidenced by the signature on the delivery docket by the duly authorised representative of the Council.
- 5.4 Notwithstanding that the Council has taken delivery of the Goods, the Supplier shall remain responsible for any loss or damage to the Goods, which may have occurred prior to delivery, and for any non-compliance of the Goods with the requirements of the Purchase Order.
- 5.5 If the Council rejects the Goods (or any part of the Goods) the Supplier must comply with a requirement of the Council to:
 - (i) collect the defective Goods and replace it at the Supplier's expense; or
 - (ii) refund the Council any amount paid for the defective Goods.
- 5.6 The Supplier shall take all reasonable steps to minimise and prevent any delay to the delivery of the Goods.
- 5.7 If the Supplier fails to deliver the Goods by the specified delivery date(s), the Council shall be entitled to terminate the

Purchase Order for default, either in whole or in part, in accordance with the provisions of Clause 7.1 and/or deduct from monies due to the Supplier as liquidated damages, representing a genuine pre-estimate of the Purchaser's damages and not as a penalty, the amount specified in the Purchase Order Form, for each week or part thereof by which delivery exceeds the specified delivery date.

6. Variations

- 6.1 The Council may vary the work under the Purchase Order or any condition thereof and the Supplier shall carry out any such variation as directed by the Council. The Supplier's price (addition or reduction) for any variation and any effect on the delivery date(s) of the Goods shall be agreed between the Council and the Supplier prior to the Supplier carrying out any such variation. However, if agreement cannot be reached, the Council shall determine the price for the variation and its effect on the delivery date(s) of the Goods.

- 6.2 The Supplier shall not vary the work under the Purchase Order or any condition of it, except as directed and approved by the Council in writing.

7. Substituted Goods

- 7.1 If the Supplier is unable to supply the Goods as specified, it must promptly notify the Council, and if the Goods are completely unavailable, the Supplier may offer another Good as a substitution. The Council may accept or reject the substitute Goods in its absolute discretion.
- 7.2 The substitution of the Goods must be approved by both parties in writing.

8. Termination

- 8.1 In the event of a substantial breach by the Supplier of any of the terms and conditions of the Purchase Order, which in the opinion of the Council may significantly delay the completion of the Purchase Order and which is not remedied within seven days of the Council notifying the Supplier in writing of any such breach, the Council may terminate the Purchase Order in whole or part.
- 8.2 If, in the opinion of the Council, the Supplier is unable to effectively perform its obligations under the Purchase Order due to insolvency, bankruptcy or related reasons, the Council shall be entitled to terminate the Purchase Order.
- 8.3 Notwithstanding any other provisions of the Purchase Order, the Council may terminate the Purchase Order by giving fourteen (14) days written notice to the Supplier.
- 8.4 In the event of insolvency of the Supplier or its default of any of the terms and conditions of the Purchase Order, the Council shall immediately suspend any further payment to the Supplier. Any additional monies required by the Council to complete the Purchase Order in excess of what the Council would have paid under the Purchase Order shall be a debt due and payable by the Supplier to the Council.
- 8.5 In the event of termination by the Council, under Clause 7.3 and provided the Supplier is not in default, the Council shall pay the Supplier for the work carried out prior to termination and all reasonable costs associated with the cancellation of any orders placed by the Supplier prior to termination.

9. Price and Payment Terms

- 9.1 The Supplier must have an Australian Business Number (ABN).
- 9.2 Unless otherwise stated in the Purchase Order, prices shall be fixed and not subject to any variation, including but not limited to variations in the cost of labour, materials, plant, transport or exchange rates.
- 9.3 The quote for the Good to be supplied under the Purchase Order shall be inclusive of GST calculated in accordance with the GST Act unless otherwise specifically stated in writing.

- 9.4 The Supplier must issue to the Council a tax invoice for the Goods within 28 days from the date of the Purchase Order in accordance with the GST Act.
- 9.5 If the Supplier is not registered for GST and is not required to be registered for GST, the Supplier must issue an invoice for the Goods within 28 days from the date of the Purchase Order.
- 9.6 A (tax) invoice must identify:
(xii) the Purchase Order Number; and
the Supplier's ABN and the name of the Supplier that is recorded in the Australian Business Register for that ABN.
- 9.7 Prior to entitlement to payment (and unless otherwise specified in the Purchase Order), the Goods must be delivered together with any certificates or warranty documents in relation to the Goods.
- 9.8 Subject to the Supplier performing all of its obligations in this agreement, the price indicated on the Purchase Order will be paid by the Council within the agreed terms of payment with the Supplier and if not so stipulated then 30 days.
- 9.9 The Supplier shall be responsible for the payment of all relevant Australian (Federal, State and Local Government) and overseas taxes, duties and charges payable with respect to the Goods. The Purchase Order price shall be deemed to be inclusive of all such taxes, duties and charges.
- 9.10 The Council may deduct from moneys due to the Supplier any money due from the Supplier to the Council under or in respect of this Purchase Order or otherwise.

10. Indemnity

The Supplier indemnifies the Purchaser against any and all claims, demands, proceedings, liabilities, costs, charges, expenses and any loss, personal injury, death or damage arising out of or in connection with any act or omission, neglect or default of the Supplier, its employees or agents related to supplying the Goods or any and all obligations or warranties under these conditions.

11. Insurance

The Supplier must maintain the following policies of insurances (and provide copies on request):

- (i) Public Liability: Amount per occurrence shall not be less \$20,000,000 (AUD);
- (ii) Product Liability (where applicable): Amount per occurrence shall not be less \$10,000,000 (AUD);
- (iii) Professional Indemnity (where applicable): Amount per occurrence shall not be less than \$5,000,000 (AUD). The policy must include the provision for one automatic reinstatement of the sum insured;
- (iv) Motor vehicle insurance for any vehicles used to provide the goods/services;
- (v) Workers Compensation; and
- (vi) any other insurances specified in the Purchase Order Form.

The Supplier shall ensure that subcontractors have like insurances.

12. Intellectual Property Rights

- 12.1 If the Purchase Order is for the provision of design services, on creation, ownership of any Intellectual Property Rights in or associated with the Purchase Order will vest in the Council and the Council grants to the Supplier an exclusive and revocable licence to use the Intellectual Property Rights in or associated with the Purchase Order for the purpose of performing any works in association with the Goods.
- 12.2 The Supplier warrants that any design, materials, documents, or methods of working, or anything else provided as a part of the design services under the Purchase Order by the Supplier will not infringe any Intellectual Property Rights.
- 12.3 The Supplier must indemnify the Council against any claims or costs, losses or damages suffered or incurred by the

Council arising out of or any way in connection with any actual or alleged infringement of any Intellectual Property Rights.

13. Disputes

- 13.1 Notwithstanding any dispute between the Council and the Supplier, the Supplier shall ensure that the progress of the work under the Purchase Order is continued without any effect on the specified delivery date.
- 13.2 Disputes or differences arising between the Council and the Supplier shall be settled by negotiation at senior management level.
- 13.3 Failing such agreement, the parties agree that the dispute shall be resolved by mediation conducted in accordance with the Australian Commercial Disputes Centre ("ACDC") mediation procedures.
- 13.4 In the event that the dispute has not been settled within six (6) weeks (or such other period as may be agreed to in writing between the parties) after the appointment of the mediator, the dispute shall be referred by either party to arbitration in accordance with the provisions of the Commercial Arbitration Act in force in the State or Territory in which the Purchase Order is issued. In any arbitration both parties shall be entitled to be legally represented. Unless the parties agree upon an Arbitrator, the Arbitrator shall be appointed by the President, for the time being, of the Australian Institute of Arbitrators.

14. Safety

- 14.1 The Supplier and its employees, agents and/or subcontractors must comply with all the Council directions, procedures and policies including any relating to health, safety and security when on its premises and when using the Council's facilities.
- 14.2 The Supplier shall be responsible for ensuring that its employees, agents, subcontractors or consultants carry out and complete the Purchase Order safely and in accordance with all legislative requirements including those pursuant to the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW).
- 14.3 The Supplier shall comply with all legislative requirements, codes of practice, and standards (including Australian Standards) in relation to work health and safety.

15. Compliance with Council Policies

- 15.1 The Supplier must become familiar with and comply with all Council's relevant policies found on its website at <http://www.sutherlandshire.nsw.gov.au/Council/Policies-and-Documents> including, but not limited to:
- (i) Statement of Business Ethics;
 - (ii) Alcohol and Other Drugs Policy;
 - (iii) Sutherland Shire Council's Safety Rules for Work, Health and Safety (CWI 02);
 - (iv) General Safety Inspection Checklist