

1. General Matters and Definitions

1.1 The following terms will, if not inconsistent with the context, have the meanings indicated:

1.1.1 '**Council**' means the Yarra Ranges Shire Council;

1.1.2 '**Functions**' means:

- (a) the goods to be supplied; and/or
 - (b) the services to be provided; and/or
 - (c) the works to be carried out,
- in accordance with the Purchase Order;

1.1.3 '**Purchase Order**' means:

- (a) the form entitled 'Purchase Order' which describes the Functions to be undertaken by the Supplier; and
- (b) these terms and conditions.

1.1.4 '**Purchase Price**' means the total amount shown on the Purchase Order; and

1.1.5 '**Supplier**' means the party described as such in the Purchase Order.

1.2 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.

2. Entire Agreement

The Purchase Order constitutes the whole understanding between the parties. The Purchase Order may only be varied by the agreement of the parties in writing.

If Council and the Supplier enter into a separate contract which deals with the same or similar subject matter of the Purchase Order, such separate contract will take precedence to the extent of any inconsistency unless otherwise agreed in writing by both parties.

3. Warranties

The Supplier warrants to Council that:

3.1 to the extent the Functions relate to the supply of goods:

- 3.1.1 such goods will be new, unless otherwise agreed;
- 3.1.2 such goods will be fit for the purpose for which items of the same kind are commonly supplied;
- 3.1.3 such goods will be of merchantable quality and free from defects;
- 3.1.4 conform to any description, model number and sample (if any) provided by the Supplier;
- 3.1.5 upon payment of the Purchase Price, such goods will become the property of Council free of encumbrances, liens, charges and all other adverse interests; and
- 3.1.6 the Supplier bears all risk in such goods until they are delivered to the location required by Council in accordance with the Purchase Order;

- 3.2 to the extent the Functions relate to the undertaking of works or services, such works or services will:
- 3.2.1 satisfy all legal requirements, relevant standards and codes;
 - 3.2.2 be undertaken in a proper and workmanlike manner;
 - 3.2.3 not infringe any third party's intellectual property or moral rights;
 - 3.2.4 be fit for the purpose required;
 - 3.2.5 be undertaken in a manner which provides and maintains, so far as is practicable, a working environment that is safe and without risk to the health of members of the public and the employees of the Supplier and Council; and
 - 3.2.6 be undertaken within any timeframes stated in the Purchase Order.

4. Variation or Termination

- 4.1 Council may, at any time, by giving written notice to the Supplier, terminate the Purchase Order and the Supplier must on receipt of such notice immediately cease all work in connection with the supply of the Goods and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event Council will pay the reasonable fees and expenses of the Supplier in accordance with the Purchase Order but not any loss of prospective profits. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had the Purchase Order been completed.
- 4.2 Council may terminate this Purchase Order without cost to itself if the Supplier fails to comply with the obligations implied by the Purchase Order and these terms and conditions, including but not limited to delivery times, warranties, quality and price.
- 4.3 Council may at any time give written notice to the Supplier proposing a variation to the quantity of the Goods. The Supplier must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply for the provision of the varied Goods. Council may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance the Purchase Order will continue as if no proposal under this sub-clause had been made.
- 4.4 Any special conditions inserted on the form entitled 'Purchase Order' shall be incorporated into this agreement and in the event of any inconsistency between such special conditions and these terms and conditions, such special conditions shall prevail.

5. Confidentiality

The Supplier will not disclose, and will ensure that its employees, agents and contractors do not disclose, any confidential information relating to Council or its affairs which may come to its or their knowledge during the term of the Purchase Order.

6. Rejection

Without limiting any other right Council may have arising out of the Purchase Order or at law, where the Functions do not meet or exceed the requirements of the Purchase Order, Council may reject the relevant goods, works or services (**Non-conforming Functions**). Council is not required to make payment for any Non-conforming Functions. The Supplier must, at the Supplier's cost, if Council requires it to do so, promptly remove any Non-conforming Functions from Council's premises or the site, and at the election of Council, either:

- 6.1 replace the Non-conforming Functions with goods, works or services which do meet the requirements of the Purchase Order; or
- 6.2 refund to Council all money paid in respect of the Non-conforming Functions.

7. Invoice, Price and Payment

Council shall pay the Supplier's invoice within 30 days from the receipt of a valid invoice (unless mutually agreed otherwise) subject to:

- 7.1 the price being the fixed price stated in the Purchase Order in Australian Dollars;
- 7.2 the price including (unless the Purchase Order expressly states otherwise):
 - 7.2.1 any applicable GST; and
 - 7.2.2 all packing, insurance and delivery charges and all taxes and duties.
- 7.3 the Functions complying with the Purchase Order;
- 7.4 the Supplier may only invoice Council after it has completed its obligations pursuant to this Purchase Order. The Supplier's invoice must also:
 - 7.4.1 be correctly addressed to Council, including the invoice date of issue;
 - 7.4.2 state Council's purchase order number and the contract number (if applicable);
 - 7.4.3 state the appropriate Council contact name;
 - 7.4.4 state the Council plant number (if applicable);
 - 7.4.5 have a unique invoice number; and
 - 7.4.6 be a valid Tax Invoice for GST purposes in accordance with Australian Tax Office requirements.
- 7.5 All invoices are to be sent directly to Council's Finance Department by one of the following methods:
 - 7.5.1 email accountspayable@yarraranges.vic.gov.au (this is the preferred method)
 - 7.5.2 mail PO Box 105, Lilydale 3140
 - 7.5.3 fax 03 9294 6225
 - 7.5.4 DX 34051
- 7.6 if Council disputes an invoice:
 - 7.6.1 Council may suspend payment until the dispute is resolved; and
 - 7.6.2 the Supplier must give Council any information or document reasonably requested in relation to the invoice or the dispute.
- 7.7 As well as any other rights, Council may deduct from the invoice any amount the Supplier owes Council (including under any indemnity).
- 7.8 Council may reject a Supplier's invoice if the Supplier has failed to comply with the requirements of this clause 7. Council will inform Suppliers in writing and Council will reasonably cooperate to resolve any outstanding invoice payments.

8. Delivery

To the extent that the Functions consist of goods, the delivery shall be made to such locations and at such time as shall be nominated by Council in the Purchase Order.

If the Supplier does not deliver the Functions by the date nominated in the Purchase Order (**Delivery Date**), the Supplier shall be indebted to Council for liquidated damages at the rate stated in the Purchase Order for every day after the Delivery Date to and including the date that the Supplier delivers the Functions.

9. Samples

To the extent that the Functions consist of goods, Council may require as a condition of delivery of any part order of such goods, that the Supplier supplies a sample of the relevant goods for approval by the Council. In the event that such a sample is produced and approved by Council, then any delivery is referable to the sample and shall be of a size, nature and quality consistent with that of the approved sample.

10. Default by Supplier

- 10.1 If the Supplier defaults in the performance or observance of any obligation it has made under the Purchase Order, Council may give notice to the Supplier specifying the default and requiring that such default be remedied within 14 days.
- 10.2 If, within 14 days after the receipt of the notice, the Supplier fails to remedy the default to the satisfaction of Council, Council (without prejudice to any other rights that it may have under the Purchase Order or at common law against the Supplier) may:
- 10.2.1 suspend payment under the Purchase Order; or
 - 10.2.2 terminate the Purchase Order and any other purchase order between the parties; and
 - 10.2.3 to the extent the Functions relate to the undertaking of works or services, have the works or services completed by another supplier and the reasonable cost incurred by Council shall be a debt due from the Supplier to Council.

11. Insolvency of Supplier

If the Supplier:

- 11.1 being a person, commits any act of bankruptcy; or
 - 11.2 being a company, commit any act of insolvency,
- Council may terminate the Purchase Order immediately.

12. Sub-Contracting and Assignment

The Supplier must not, except with the written consent of Council, sub-contract or assign the whole or any portion of its rights and obligations under the Purchase Order, and no sub-contractors or assignees will have any rights under the Purchase Order against Council or be entitled to receive any payments under the Purchase Order from Council. Where Council gives its consent to the Supplier in accordance with this sub-clause, the Supplier remains fully responsible for performance under the Purchase Order.

13. Statutory Requirements

The Supplier must obey and must ensure that its employees, sub contractors and agents obey any Acts, regulations and local laws in any way applicable to the performance of the Purchase Order, including, without limitation, any occupational health and safety legislation.

The Supplier, when providing works, will provide to Council such safety, site, traffic and environmental management plans as directed by Council from time to time for review and approval and shall at all times undertake the works in compliance with such plans.

14. Indemnity and Advance Release

The Supplier indemnifies and holds harmless Council, its Councillors, staff, agents and contractors from and against all actions, claims, losses, damages, injuries, penalties or demands consequent upon, occasioned by or arising directly or indirectly or in connection with from its performance or purported performance of its obligations under the Purchase Order, including, without limitation any acts or omissions of the Suppliers' agents and employees.

15. Insurance

Unless Council provides its prior written consent otherwise, the Supplier must:

15.1 obtain and maintain insurances which cover Council's interests as follows:

15.1.1 to the extent that the Function involves the provision of goods only, public liability and product liability insurance providing coverage for an amount per event of not less than \$1 million;

15.1.2 to the extent that the Function involves the provision of services only, public liability cover for an amount per event of not less than \$5 million;

15.1.3 to the extent that the Function involves the provision of services and goods, public liability and product liability for an amount per event of not less than \$5 million; or

15.1.4 to the extent that the Function involves the provision of works (in part or whole), public liability and product liability for an amount per event of not less than \$10 million;

15.2 to the extent that the Functions include the provision of design or professional services, obtain and maintain for the duration of the Purchase Order, professional indemnity insurance for an amount of not less than \$1 million per event;

15.3 to the extent that the Function involves the provision of services and/or works, the supplier must obtain and maintain for the duration of the contract appropriate workers compensation insurance in compliance with all statutory requirements; and

15.4 on request, provide evidence to Council's reasonable satisfaction that the Supplier is complying with this clause 15.

16. Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to affect, perfect or complete the transactions contemplated by the Purchase Order.

17. Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in the Purchase Order.

18. No Relationship

Nothing in the Purchase Order will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in the Purchase Order will be deemed to authorise or empower any of the parties to act as agent or with any other party.

19. Number and Gender

In the Purchase Order, a reference to:

19.1 the singular includes the plural and vice versa; and

19.2 a gender includes the other genders.

20. Governing Law

The law of the State of Victoria governs the Purchase Order and any legal proceedings under the Purchase Order.

21. Joint and Several Obligations

If the Supplier consists of two or more parties, the Purchase Order binds each of them severally and jointly.

22. Method of Giving Notices

A notice required or permitted to be given by one party to another under the Purchase Order must be in writing, addressed to the other party and:

22.1 delivered to that party's address;

22.2 transmitted by facsimile to that party's facsimile number; or

22.3 by email.

23. Receipt of Notices

A notice given to a party in accordance with Term 22 must be treated as having been duly given and received:

23.1 if delivered to a party's address on the day of delivery;

23.2 if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received on the day of transmission; or

23.3 if sent by email, notification of a receipt message.

24. Site Occupational Health and Safety

To the extent that the Functions consist of Works, Council appoints the Supplier awarded the Contract for the construction work performed for or on behalf of Council and authorises the Supplier awarded the Contract to manage or control the workplace to the extent necessary to discharge the duties imposed on Council.

Refer to the Victorian Occupational Health and Safety Regulations Subdivision 2, part 5.1 Construction Reg 333(1), Reg 321 and Reg 323 for further information.