

1. General

These terms and conditions ("**Terms & Conditions**") apply to any purchase order ("**Purchase Order**") for goods and/or services ("**Goods/Services**") issued to the Supplier by Parkes Shire Council ("**PSC**"). Where a Purchase Order is issued to the Supplier, there is a contract formed between PSC and the Supplier which is constituted by the Purchase Order, these Terms & Conditions, any written special conditions issued by PSC with the Purchase Order, and any documents provided by PSC to the Supplier specifying the requirements for the Goods/Services ("**Contract**").

If there is any inconsistency between the Terms & Conditions and any other document forming part of the Contract, the Terms & Conditions will prevail. For the avoidance of doubt, any terms and conditions included in the Supplier's quote, offer document, or any other document the Supplier provides to PSC are excluded from the Contract, except to the extent they are expressly included in any document identified above as comprising the Contract.

2. Quality and Delivery

Without limiting the warranties set out under clause 4, the Supplier warrants to PSC that it will supply or perform the Goods/Services:

- (a) so as to ensure that the Goods/Services are suitable and fit for their intended purpose and comply with the Contract, all legislative requirements (including relevant approvals) and any applicable Australian Standards;
- (b) with all due care and skill;
- (c) in accordance with all applicable legislative requirements (including relevant approvals); and
- (d) with due expedition and without delay, and so as to complete such supply or performance on or before the date for delivery or completion of the performance of the Goods/Services (as applicable) as set out in the Purchase Order or, if no such date is set out in the Purchase Order, the date nominated by PSC ("**Completion Date**").
- (e) The Supplier must keep PSC informed of any delays or any other matter which may affect the supply or performance of the Goods/Services.
- (f) Where the supply or performance of the Goods/Services involves the delivery of goods, the Supplier must deliver the goods to the location set out in the Purchase Order or, if no such location is set out in the Purchase Order, the location nominated by PSC.

3. Ownership and Risk

- (a) Title to the Goods/Services will pass to PSC upon the earlier of:
 - (i) supply or performance of the goods/Services being completed in accordance with the Contract;

- (ii) acceptance of the Goods/Services by PSC; and
- (iii) payment for the Goods/Services by PSC.

- (b) The Supplier assumes the care of, and all risk in, the Goods/Services until supply or performance of the Goods/Services is completed in accordance with the Contract. The Supplier must make good any loss of, or damage to, the Goods/Services which occurs during the period until the supply or performance of the Goods/Services is completed in accordance with the Contract.

4. Warranties

- (a) Without limiting the Supplier's obligations under clause 2 and any warranties implied by law, and notwithstanding PSC's acceptance or right of inspection of the Goods/Services (or any other terms of the Contract), the Supplier warrants that the Goods/Services to be supplied or performed under the Contract:
 - (i) will be free from any encumbrances and defects;
 - (ii) will be new and of merchantable quality and suitable and fit for their intended purpose;
 - (iii) will be of the description and quality specified in the Contract; and
 - (iv) will not infringe any patent, registered design, trademark or name, copyright or any other protected right.

- (b) The Supplier must, when directed by PSC, itself provide and, in respect of any of the Supplier's subcontractors, obtain and provide from such subcontractors, for the benefit of PSC, guarantees and warranties in respect of the Goods/Services on the best terms reasonably commercially available having regard to the nature of the Goods/Services.

5. Acceptance and Rejection

- (a) Once the Supplier notifies PSC that it is of the opinion that it has completed the supply or performance of the Goods/Services in accordance with the Contract, PSC will inspect the Goods/Services and notify the Supplier whether the Goods/Services are rejected. Any acceptance by PSC of, or failure by PSC to reject, any Goods/Services will not be evidence of the satisfactory performance by the Supplier of its obligations under the Contract and will not limit the rights of PSC under, or in connection with, the Contract, including under clause 5(b).
- (b) PSC may, at any time (including before or after acceptance), reject the Goods/Services if PSC believes the Goods/Services are defective or otherwise do not comply with the Contract. Prior to rejection, PSC may unpack, inspect and test the Goods/Services for this purpose. Such inspection and testing will not release the Supplier from any obligation of the Supplier under the Contract.

(c) If PSC rejects the Goods/Services (or any part of the Goods/ Services), and without limiting the liability of the Supplier, PSC may require the Supplier (at PSC's option) to:

- (i) collect the defective or non-compliant Goods/Services, and replace the defective or non-compliant Goods/Services, or re-perform or rectify the defective or non-compliant Goods/Services, at the Supplier's own expense and risk;
- (ii) refund PSC any amount paid for the defective or non-compliant Goods/Services within 7 days; or
- (iii) without prejudice to any other rights or remedies available to PSC, reimburse any and all costs incurred by PSC associated with the rectification or replacement of the defective or non-compliant Goods/Services.

6. Variations

- (a) PSC may direct the Supplier to vary the Goods/Services.
- (b) The Supplier must not vary the Goods/Services, except as directed in writing by PSC under clause 6(a).
- (c) No variation will invalidate, or constitute a repudiation of, the Contract on any ground, including to the extent that additional Goods/Services are directed to be supplied or performed under the Contract.
- (d) The right to direct a variation includes the right to omit any part of the Goods/Services and have that omitted part of the Goods/Services performed out or supplied by PSC or others. The Supplier will have no entitlement to any claim arising out of action taken by PSC to omit any part of the Goods/Services and have that part of the Goods/Services, or similar work or goods, performed out or supplied by itself or others.
- (e) PSC must, as soon as reasonably practicable, value each variation which the Supplier is required to carry out under a direction of PSC using reasonable rates or prices (including, to the extent PSC determines it is reasonable to use them, any rates or prices included in the Contract or any tender submitted by the Supplier). That amount must be paid by PSC to the Supplier or by the Supplier to PSC (as applicable) in accordance with clause 8.

7. Termination

- (a) PSC may terminate the Contract where:
 - (i) the Supplier fails to complete the supply or performance of the Goods/Services by the date required by the Contract; or
 - (ii) the Supplier otherwise breaches the Contract.
- (b) At any time, PSC may (in its absolute discretion and for any reason), terminate the Contract, in which

case the Supplier will be entitled to be paid (as its sole remedy) the costs directly and reasonably incurred by the Supplier due to the termination of the Contract (but without prejudice to PSC's accrued rights and entitlements).

- (c) Nothing in this clause 7 limits or otherwise affects any rights PSC may have to terminate the Contract at law, nor the rights and entitlements relating to or arising from such termination.

8. Price, Payment Terms, GST

- (a) The prices and values indicated on the Purchase Order include, as appropriate, the cost of delivery to the address required by the Contract, and any insurances required to be effected and maintained under the Contract, duty, taxes (subject to clause 8(i) in respect of GST) and packing costs, and any other costs associated with manufacturing, delivering, supplying and/or performing the Goods/Services.
- (b) In this clause 8, "**Business Days**" means any day other than a Saturday, Sunday or public holiday, or 27, 28, 29, 30 or 31 December.
- (c) The price for the Goods/Services is the price stated in the Purchase Order. PSC will pay the Supplier such price in accordance with the Contract.
- (d) The Supplier may issue to PSC a claim for payment on account of the price on the date that is 2 Business Days after the completion of the supply or performance of the Goods/Services in accordance with the Contract. The Supplier's payment claim must identify the Purchase Order number to which it relates, and include details of the value of the Goods/Services, a statutory declaration in a form approved by PSC from the Supplier's representative who is in a position to know the facts attested to, and such other information and documents as PSC may require.
- (e) Within 10 Business Days of receipt of such payment claim, PSC will issue to the Supplier a payment schedule setting out the payment claim to which it relates, PSC's determination of the amount due from PSC to the Supplier and if PSC determines that no monies are due from PSC to the Supplier, the monies that are due from the Supplier to PSC, and if PSC is withholding money, the reasons for withholding such money.
- (f) If PSC, in a payment schedule, determines an amount is payable by:
 - (i) PSC to the Supplier, PSC must (subject to clause 8(g)) pay the Supplier the amount assessed within 15 Business Days of receipt of the Supplier's payment claim; or
 - (ii) the Supplier to PSC, the Supplier must pay to PSC the amount assessed within 5 days of the issue of the payment schedule.

- (g) PSC may deduct or set off from any money payable by the Supplier to PSC under or in connection with the Contract:
- (i) any debt or other moneys due, or which PSC claims to be due, to PSC from the Supplier whether under the Contract or otherwise in connection with the Goods/Services; and
 - (ii) any amount that the Supplier is obliged to withhold from payment pursuant to the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- (h) PSC payments will be made via Electronic Funds Transfer to the Supplier's nominated bank account.
- (i) Where a payment schedule sets out an amount determined as being payable by PSC to the Supplier, the Supplier must issue a tax invoice to PSC for that amount within 7 days of receiving the relevant payment schedule from PSC. A tax invoice must identify the Purchase Order number to which it relates, together with the Supplier's name and ABN. All electronic tax invoices must be in PDF format and emailed to accounts@parkes.nsw.gov.au.

9. Indemnity

The Supplier indemnifies PSC against any loss or liability suffered or incurred by PSC arising out of:

- (a) the Goods/Services infringing any patent, registered design, trademark or name, copyright or any other protected right; or
- (b) loss of or damage to PSC's property and claims in respect of personal injury or death or loss of, or damage to, any other property arising out of or in connection with the Goods/Services or any act or omission of the Supplier in connection with the Contract, but the indemnity will be reduced proportionally to the extent that the negligent act or omission of PSC contributed to the injury, death, loss or damage.

10. Insurance

Unless PSC has notified the Supplier in writing stating otherwise, the Supplier must effect and maintain the following policies of insurances for the duration of the Contract or such longer period as may be stated below:

- (a) public liability insurance, with a level of cover not less than \$20,000,000;
- (b) product liability insurance, with a level of cover not less than \$10,000,000;
- (c) professional indemnity insurance, with a level of cover not less than \$2,000,000. This policy must provide for one automatic reinstatement of the sum insured and be maintained until the date that is 7 years after the completion of the supply or performance of the Goods/Services;
- (d) an insurance policy which covers the Goods/Services (to the extent the Goods/Services involve or constitute goods or physical items to be supplied, provided, manufactured, assembled or

constructed by the Supplier) against loss or damage resulting from any cause until the Supplier ceases to be responsible for their care; and

- (e) workers compensation insurance.

When requested by PSC from time to time, the Supplier must produce evidence of the currency of the Supplier's insurance policies required to be effected under the Contract.

11. Intellectual property rights

- (a) In this clause 11, "Design Documents" mean the drawings, specification and other information, samples, models, patterns and the like required by the Contract or otherwise created for the delivery or performance of the Goods/Services.
- (b) Copyright and property in the Design Documents vest in PSC upon creation, and PSC grants to the Supplier an irrevocable, royalty-free licence to use such Design Documents for the delivery or performance of the Goods/Services. The Supplier must do everything necessary to perfect such vesting.
- (c) Such vesting of copyright and property in clause 11(b) will not extend to components of the design which have been developed by the Supplier for general use in the Supplier's work and have not been specially developed for incorporation in the Design Documents ("**Supplier Background IP**"). The Supplier grants to PSC an irrevocable, royalty-free licence (with right to sub-licence) to use the Supplier Background IP in connection with the Goods/Services.

12. WHS and Environmental Regulations

- (a) The Supplier must ensure that the Goods/Services are supplied or performed in accordance with, and otherwise comply with, safe working and environmental practices, and all laws applicable to the Goods/Services, including the *Work Health and Safety Act 2011* (NSW), the *Protection of the Environment Operations Act 1997* (NSW), and any regulations and/or codes of practice prescribed thereunder.
- (b) The Supplier must comply with PSC's work health and safety management system, including any contractor management policy, as notified by PSC to the Supplier from time to time, insofar as it applies to the Supplier or the Goods/Services.

13. Subcontracting

The Supplier must not subcontract the performance of the whole or any part of the Supplier's obligations under the Contract without PSC's prior written approval, which PSC may grant or withhold at PSC's absolute discretion. The Supplier will remain liable for the performance of the Contract and the acts and omissions of any subcontractor as if such acts and omissions were the Supplier's.

14. Confidentiality

- (a) The Supplier must treat the Contract and any documents or other information relating to the Contract, or to the delivery or performance of the Goods/Services, as confidential and must not disclose any of these without the prior written consent of PSC, except to the extent that such disclosure is required for the Supplier to carry out its obligations under the Contract.
- (b) The parties acknowledge and agree that PSC may disclose the Contract (and information concerning the terms of the Contract) to the public under or in accordance with any legislative requirements, including the *Local Government Act 1993* (NSW) or the *Government Information (Public Access) Act 2009* (NSW).

15. Privacy

The Supplier must comply, and must ensure that the Supplier's employees, officers, subcontractors and other agents comply, with all applicable privacy laws.

16. Proportionate Liability Legislation

The parties agree that to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities arising under, out of, or in any way in connection with, the Contract, or the delivery or performance of the Goods/Services, whether such rights, obligations or liabilities are sought to be enforced in contract, in tort (including negligence) or otherwise.

17. No fetter

The Contract will not, in any way, unlawfully restrict or otherwise unlawfully affect the unfettered discretion of PSC to exercise any of its functions and powers under any legislative requirements and no exercise of any such functions or powers will entitle the Supplier to make any claim against PSC.

18. General

- (a) The Contract may only be varied with PSC's written agreement.
- (b) The Supplier must not assign the benefit of the Contract in whole or in part without the prior written consent of PSC, which PSC may grant or withhold at PSC's absolute discretion.
- (c) The failure or delay by PSC at any time to enforce a condition, or to exercise a right or remedy, is not a waiver of PSC's rights.
- (d) The law of New South Wales governs the Contract. The Supplier submits to the jurisdiction of the courts of New South Wales and waives any right to claim that those courts are inconvenient forums.
- (e) Unless otherwise specified in the Contract, prices are in Australian Dollars and are expressed as being exclusive of GST.
- (f) The Contract constitutes the entire, final and concluded agreement and understanding between the parties and will take effect according to its

tenor despite any previous representations, correspondence or prior agreement in conflict or at variance with the Contract, or any correspondence or other documents relating to the subject matter of the Contract (including any terms or conditions proposed by the Supplier), which may have passed between the parties prior to the execution of the Contract and which are not included in the Contract.

- (g) The parties are independent contractors. No relationship of employment, agency, partnership or joint venture is created by the Contract.
- (h) PSC's delay or failure to exercise a right or remedy, or enforce a condition, under the Contract is not a waiver of any of PSC's rights. PSC's waiver of a breach of the Contract is not a consent to any subsequent breach.
- (i) If any provision or part of any provision in the Contract is, in any way, illegal, void, invalid or unenforceable, it is to be read down so as to be legal, valid and enforceable. If this is not possible, the provision (or where possible, the offending part) is to be severed from the Contract to the extent only of such illegality, voidness, invalidity or unenforceability, without affecting the legality, validity or enforceability of the remaining provisions (or parts of those provisions) which will continue in full force and effect.
- (j) PSC may (in its absolute discretion) at any time and from time to time, by notice in writing to the Supplier, extend the Completion Date for any reason. PSC is not obliged to exercise this power reasonably or for the benefit of the Supplier.

19. Modern Slavery

The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services.

If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of the Contract, the Supplier must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.

Modern Slavery has the same meaning as it has in the Modern Slavery Act 2018 (Cth).

20. Council Policies

Suppliers providing services on PSC premises must at all times abide by the PSC Policies, which may be modified from time to time to comply with relevant government legislations.

Policies can be found on the council website:
<https://www.parkes.nsw.gov.au/Home>