

CITY OF KALAMUNDA STANDARD TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES

The **City of Kalamunda** (the City) requires that the Supplier supply the City with the goods ("**the Goods**") and/or services ("**the Services**") specified in the City's purchase order ("**the Purchase Order**") and the Supplier has agreed to provide the Goods and/or Services on the following Terms and Conditions:

1. Issue and Acceptance of Purchase Order

- 1.1 The Purchase Order is the City's offer to the Supplier for the supply of goods and/or services described in the Purchase Order. Acceptance of the Purchase Order by the Supplier shall constitute a binding contract between the City and the Supplier to supply the Goods and/or Services specified in the Purchase Order on the terms and conditions contained herein (this "**Agreement**").
- 1.2 The Supplier shall not provide the Goods and/or the Services to the City without obtaining a numbered Purchase Order from the City. The Supplier must ensure that the Purchase Order number is clearly marked on all delivery dockets, packages, invoices and other documents and correspondence relating to the supply of the Goods and/or the Services.
- 1.3 If the Supplier proceeds with the manufacture and/or supply of the Goods and/or Services without first requesting or receiving the City's Purchase Order or written acceptance of variations proposed by the Supplier, the Supplier is deemed to have accepted the terms and conditions contained herein and the terms of the Purchase Order.

2. Warranties

- 2.1 The Supplier warrants that the Goods and services:
 - a. shall be of suitable quality and free from defects in design, materials and workmanship;
 - b. shall be manufactured and delivered strictly in accordance with any drawings, specifications and other instructions of the City given for this Agreement;
 - c. shall comply with the requirements of any relevant statutes, regulations or legally applicable standards;
 - d. shall be in accordance with and shall perform in accordance with the Supplier's technical specifications.
- 2.2 The City relies on the Supplier's skill and judgment. The Supplier undertakes to advise the City whenever the Supplier believes that compliance with a specification of the City would render the Goods and/or Services unsuitable for the City's requirements.

2.3 All Goods and/or Services delivered or performed by the Supplier shall be subject to acceptance testing by the City and any Goods and/or Services tendered, offered or delivered which, in the opinion of the City, do not comply with this Agreement may be rejected by notice in writing to the Supplier.

2.4 Any Goods rejected by the City pursuant to clause 2.3 must be removed by and at the expense of the Supplier as soon as practicable after notice is given to the Supplier of their rejection.

3. Price and Payment

3.1 The price payable for the Goods and/or Services shall be that specified on the Purchase Order for the date of delivery of the Goods or the date of commencement of the performance of any Services.

3.2 The price set out in the Purchase Order is all-inclusive and is the total amount payable by the City (subject to this Agreement) under this Agreement and (without limiting) includes all taxes, duties, charges, levies and fees payable on or in respect of the Goods and the Services. The City shall not be liable for additional costs or charges or an increase in price unless accepted by it in writing prior to the specified delivery date of the Goods or prior to the specified commencement date of any Services involving such increased cost or charges or price.

3.3 Unless otherwise agreed between the Supplier and the City in writing, amounts payable by the City pursuant to an invoice rendered in accordance with the above, shall be paid by the City no later than thirty (30) days from the end of the month of the date of invoice if the Goods and/or Services have been accepted by the City and that the Supplier has complied with this Agreement in all respects.

3.4 If the City has a dispute in relation the contents of any invoice issued by the Supplier, then the City shall bring notice of such dispute to the attention of the Supplier within fourteen (14) days of receipt of the invoice. The City shall not be required to pay the invoice until the parties have reached agreement in relation to the dispute or until the Supplier shall have obtained a judgment against the City in respect of that amount (whichever occurs first).

In addition, the City may withhold payment of the amount charged for Services performed, or any instalment of that amount, if the Supplier's performance of the Services is unsatisfactory, or if the Supplier is in breach of this Agreement.

3.5 Wherever possible, the City's preferred payment method is by Electronic Funds Transfer.

3.6 The City's preferred method of sending invoices is by email to the following email address: accounts@kalamunda.wa.gov.au.

Under no circumstances shall the Supplier hand deliver, fax, email or mail any invoice(s) to any other business / service unit other than the City of Kalamunda's Accounts Payable service unit. Failure to comply with these requirements may result in the possible loss or misplacement of an invoice(s) and the subsequent delay in the payment of the account(s) for which the City shall not be deemed liable. No late payment penalty shall apply.

4. Delivery

4.1 The Goods shall be delivered on the date specified in the Purchase Order. The City may require that all Goods ordered for a specified Delivery Date is delivered at the same time or it may accept delivery in part from time to time such acceptance to be completely within the City's discretion.

5. Timeliness

5.1 Time is of the essence in the performance of the obligations under this Agreement. The Supplier acknowledges that the City may return part or all any shipment of Goods received outside the Delivery Date and charge the Supplier with any loss or expense sustained because of the Supplier's failure to deliver as agreed. Without prejudice to the foregoing, if any circumstances arise which may delay the delivery of the Goods, the Supplier shall immediately notify the City of the circumstances and propose a revised delivery date which the City may elect to agree or not agree to, at its own discretion. The exercise by the City of its rights under this clause shall be without prejudice to any claim for damages or other rights it may have against the Supplier.

6. Indemnities

6.1 The Supplier shall indemnify and keep indemnified the City 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 City and arising directly or indirectly out of or about:

- a. any claim or suit for alleged infringement of patents or copyright relating to any use or sale of Goods or Services hereunder and will assume the defence of all such suits and will pay all costs and expenses incidental thereto;
- 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 City or the City's employees or agents.

7. Site Works

7.1 Where site works are applicable and the Supplier, its employees, sub-contractors or agents provide work in connection with the supply and installation of Goods or perform Services; the Supplier shall ensure that its employees, agents and sub-contractors: (i) perform all work in a proper and workmanlike manner and in strict accordance with any drawings, specifications and instructions;

- I. perform all work in a proper and workmanlike manner and in strict accordance with any drawings, specifications and instructions;
- II. perform all work so as not to impede, or interfere with any activities being carried out on the City's premises;
- III. comply with the City's safety regulations, relevant Australian Standards and the City's directions, and orders in regard thereto;
- IV. provide at their own expense (except where otherwise specified) all labour, tools, equipment and material necessary to complete the work; and
- V. enter upon the City's premises at their own risk.

8. Insurances

8.1 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 in transit; Transit and Material Damage Insurance for the goods' purchase value (including freight and other charges), up until title and risk in the goods pass to the City; and
- b. If agreed upon otherwise, all site works to have:
 - I. Public and Products Liability Insurance with a minimum limit of not less than ten (10) million dollars (\$10,000,000) for any one occurrence and ten (10) million dollars in the aggregate;
 - II. Workers Compensation and Employers Liability Insurance in accordance with the law of the State in which the work is performed. Such insurance shall be unlimited in respect to common law liability; and
 - III. Comprehensive Motor Vehicle Third Party Injury and Property Damage with a minimum limit of not less than ten (10) million dollars (\$10,000,000) for any one occurrence and ten (10) million dollars in the aggregate.

Where such Services referred to above include the giving of professional advice or instruction, design, formula or specification, the Supplier shall effect the Professional Indemnity insurance with a minimum cover of not less than five (5) million dollars (\$5,000,000) for any one claim.

9. Termination

9.1 Without prejudice to any other rights and remedies it has under the Agreement or otherwise, the City may, at any time, by written notice to the Supplier, terminate the Contract.

9.2 The City may forthwith terminate this Agreement by notice in writing if the Supplier is in default of any term or condition of this Agreement.

9.3 The City may, without prejudice to any other rights or remedies hereunder, forthwith terminate this Agreement by notice in writing if the Supplier:

- (i) is insolvent or presumed by a court to be insolvent as per the meaning of the Bankruptcy Act 1966 or the Corporations Act 2001. In addition, the City reserves the right to offset all additional costs incurred to complete the remainder of the works against monies owed to the Supplier for works completed up to the date the insolvency is determined or presumed;
- (ii) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (iii) has an administrator appointed over all or any of its assets or undertakings;
- (iv) has a controller with the meaning of section 9 of the Corporations Act 2001 or similar officer appointed to all or any of its assets or undertaking.

9.4 If this Agreement requires Goods or Services to be manufactured to the City's specification or requires the Supplier to install or fit Goods, then at any time prior to completion of the work to be performed in fulfilment of this Agreement, the City may terminate this Agreement upon written notice to the Supplier, and upon receipt of such notice the Supplier shall stop all work hereunder, except as may be otherwise directed by the City. Upon termination under this clause, the City shall pay to the Supplier an amount equal to:

- (a) the completed pro-rata amount of the contract price; and
- (b) five percent (5%) of the amount calculated in (a)

10. Breach

10.1 If the Supplier breaches this Agreement, or advises the City that it is unable to or will not perform all or any of its obligations under this Agreement, then without limiting any other right or remedy the City may;

- (a) if it is permitted to do so under this Agreement, terminate this Agreement by notice in writing to the Supplier; and/or

(b) acquire the Goods and/or Services from a third party(s).

10.2 Indemnity for breach

- a. Any additional cost to the City of acquiring substitute Goods and/or Services from a third party will be an amount due by the Supplier to the City immediately upon the City making demand for that amount.
- b. The Supplier must pay to the City the whole of any cost or expense, loss or damage suffered or incurred by the City because of the Supplier's breach of this Agreement.

11. Intellectual Property Rights

- 11.1 Rights in relation to any materials, specifications, plans, diagrams, artistic work or any other item produced for the fulfilment of the Contract, shall be vested to the City.
- 11.2 In no event, will the City or its successors be liable for any patent, copyright or trademark infringements committed by the Supplier or its third party arising from this contract.

12. General

- 12.1 This Agreement is confidential to the City and neither its terms nor any information relating to it may be published or disclosed to any third party by the Supplier (except to the extent necessary for the purposes of this Agreement) without the City's prior written consent.
- 12.2 This Agreement shall be governed by and construed in accordance to the laws of Western Australia and the parties shall submit to the jurisdiction of the Courts of Western Australia.
- 12.3 The Supplier shall not directly or indirectly sub-contract or assign this Agreement or any of its rights or obligations under this Agreement or any part of this Agreement without obtaining the City's prior written consent.

The appointment of subcontractors by the Supplier shall not relieve the Supplier from any liability or obligation under this Agreement. The Supplier shall be liable for the acts and omissions of subcontractors and employees, officers, agents and contractors of subcontractors as if they were acts and omissions of the Supplier. The Supplier shall ensure that its subcontractors comply with the terms of this Agreement.

- 12.4 If a written Supply Contract exists between the City and the Supplier for supply of the goods and/or services listed on this order, the terms and conditions of the Supply Contract shall take precedence over these terms and conditions to the extent of any inconsistency.

- 12.5 If the City is restructured by Law, then the rights and obligations of the City under the Contract are assigned to and assumed by the appropriate legal entity as determined by the City or the successors of the City under the restructure.
- 12.6 Acceptance of the purchase by the Supplier will constitute acceptance of the City's Occupational Health & Safety requirements and guidelines. The Guidelines can be found on the City's website. If the Supplier breaches the guidelines, then without limiting any other right or remedy the City may;
- a. if it is permitted to do so under this Agreement, terminate this Agreement by notice in writing to the Supplier; and/or
 - b. acquire the Goods and/or Services from a third party(s).