



PURCHASE ORDER TERMS & CONDITIONS

Version:	1.0
Issued:	February 2019
Next Review:	February 2021

Preliminary: These terms apply to a purchase order that references these terms, as issued by the District Council of Lower Eyre Peninsula (Council) and accepted by a supplier of goods / services (a Supplier). A special condition stated on the purchase order prevails over these terms to the extent of any inconsistency. The purchase order and these terms together prevail over any terms the Supplier issues.

Supply Contract: The Supplier accepts a purchase order either by counter-signing and giving to Council a copy of the purchase order, or by commencing the supply ordered after receipt of the purchase order. Once accepted, a purchase order and these terms together form a contract (Supply Contract) for supply by the Supplier to Council of the goods / services stated on the purchase order. A Supply Contract is the whole contract between the parties about its subject matter and supersedes any prior contract or obligation between the parties about its subject matter. A Supply Contract can be amended only by written agreement of all parties.

Goods: It is a condition of supply that goods must be new / of merchantable quality / free of encumbrances and third party interests / conform to the description stated and any samples provided. A description of weight / volume means weight / volume when loaded for delivery. The Supplier must deliver goods to any stated delivery address or, if no such address is stated, to Council's principal office. Only if Council agrees may the Supplier deliver goods by instalments or make delivery later than a delivery date stated. At any time, Council may reject goods delivered that do not conform to the Supply Contract; the Supplier at its cost must retake possession of goods so rejected. On making a delivery, the Supplier must give Council any manufacturer's data sheets / operating or maintenance instructions / product guarantees usual for that kind of goods. Title and also risk of loss / damage / deterioration in goods pass from the Supplier to Council upon acceptance of delivery.

Services: It is a condition of supply that services must conform with (in descending priority):

- applicable laws and codes of practice;
- the other requirements of the Supply Contract;
- any applicable standard published by Standards Australia then current;
- any reasonable directions as Council may give; and
- the exercise of reasonable skill, care and diligence.

Only if Council agrees may the Supplier subcontract any of the services; approval of a subcontract does not relieve the Supplier from any liability under the Supply Contract.

The Supplier and each of its subcontractors and their respective workers engaged in providing services must hold in good standing any government licence / certification or trade qualification required for those services; at any time, Council may require evidence of such.

The Supplier at its cost must supply and install any materials, plant, equipment, temporary works, parts or components the provision of the services requires.

In providing services, the Supplier and each individual used in providing those services:

- must comply with such of Council's published policies concerning occupational health and safety, protection of the environment as may be applicable;
- is of good character, qualified, trained, competent, inducted in safety and environmental protocols, properly supervised, given and made to use appropriate safety clothing and equipment;
- receives when due the remuneration and benefits to which that individual is entitled under applicable laws.

As a continuing obligation, the Supplier indemnifies and holds harmless Council against all claims and all costs, liability and expenses incurred by Council in respect of:

- the employment of an individual used in providing services;
- the injury or death of such an individual (to the extent not caused by the negligence of Council or a person for whom Council is responsible); and
- a claim or finding that such an individual is an employee of Council.

While services are being provided and for at least 12 months thereafter, the Supplier must keep commercially reasonable records regarding its provision of services. At any reasonable time, Council may inspect and take extracts from those records.

Insurances: The Supplier must insure:

- goods supplied against product liability for at least \$10 million;
- services provided against liability for at least \$10 million;
- if the Supplier or its subcontractor is to provide services upon any land under the care, control and management of Council, against public risk liability in respect of that land for at least \$10 million. At any time, Council may require evidence of such insurances. The effecting of insurance does not limit the Supplier's liabilities under the Supply Contract. If by reason of the Supplier's or its subcontractor's default or negligence, Council claims under its own insurance, the Supplier must pay any excess or deductible for that claim.

Defects: The Supplier within 60 days of notice by Council and at its cost must rectify any defects in its goods / services as become known in the 365 days after delivery of the goods / completion of the services. In default, Council may attempt remedy of the defect and recover the costs from the Supplier. For these purposes, defect means non-conformity with the Supply Contract.

Prices: A price stated is fixed and includes the cost of all the Supplier's responsibilities under the Supply Contract. In case of goods, a price includes any weighing, packaging and delivery. In case of services, a price includes any fee, levy, duty, cost, expense or tax (except GST) incurred by the Supplier in providing the services. If a price is stated as before GST, the consideration payable by Council is increased by any GST the Supplier incurs for the supply; that additional amount is payable when Council is required to pay the price for the supply.

Invoices: Council is not liable to pay for a supply except after receipt of the Supplier's (tax) invoice. An invoice must cite the purchase order number. In case of services, an invoice may not be issued until completion of the services.

Payment: Council must pay an approved invoice to the Supplier within thirty days of receipt of the invoice. Council may pay by cheque or, at the option of either party, by electronic funds transfer to a bank account the Supplier nominates. If Council in good faith disputes an invoice, Council may withhold a disputed amount pending resolution of the dispute. Council may set off a claim against the Supplier against a claim the Supplier may have against Council on any account.



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Despite the above, Council need not pay the Supplier until the Supplier has provided to Council in form acceptable to Council:

- (a) any security the Supply Contract requires;
- (b) evidence of any insurances, site-specific risk assessment and other preliminary documents the Supply Contract requires;
- (c) copies of records / test results / services the Supply Contract requires; and
- (d) if Council so requires, evidence that payments to subcontractors / workers engaged in providing services were paid when due.

Termination: In addition to remedies under applicable laws, Council may by notice to the Supplier suspend / cancel a Supply Contract if:

- (a) Council reasonably believes the Supplier to be insolvent;
- (b) the Supplier is in material default under any contract with Council;
- (c) it becomes unlawful for the Supplier to perform the contract;
- (d) any information provided by the Supplier to Council in connection with a contract is misleading or deceptive in a material particular; or
- (e) the Supplier, its subcontractor or worker does or allows anything that in Council's reasonable opinion likely to bring Council into disrepute.

Assignment: Only if Council agrees may the Supplier assign a Supply Contract.

Time: Time is of the essence as regards any date or period under a Supply contract.

Disputes: A dispute in connection with a Supply Contract must be resolved by this process and without litigation:

- (a) first a meeting between senior executives of the parties each having authority to resolve the dispute; and
- (b) secondly, if the dispute is not resolved with 60 days after being first notified by one party to the other, by referring the matter to arbitration.

Notices: To be effective, a notice under a Supply Contract must be in writing and given to a party either:

- (a) by registered post to the recipient's stated address, and is taken to be given 3 days after it is posted or (if earlier) at the time at which the letter would be delivered in the ordinary course of post; or
- (b) as permitted by a statute applicable to the recipient.

Liability: The Supplier is liable to Council for anything done or not done by an officer, employee, contractor or agent of the Supplier or of its subcontractor that if done or not done by the Supplier would breach a Supply Contract. If Council or a person for whom Council is responsible gives to the Supplier a consent, approval or direction for the purposes of a Supply Contract or accepts any work or inspects anything for the purposes of the contract:

- (a) no such person thereby assumes any duty of care, responsibility or liability to the Supplier for that thing; and
- (b) the Supplier is not to any extent relieved from their obligations to comply with the contract.

Indemnity: As a continuing obligation, except to the extent caused by the negligence of Council or a person for whom Council is responsible, the Supplier indemnifies and holds harmless Council against:

- (a) loss of or damage to property under the care, control and management of Council;
- (b) claims by any person against Council or a person for whom Council is responsible in respect of personal injury or death or loss of or damage to any property or infringement of any right; and
- (c) costs or expenses (including reasonable legal and experts' fees) incurred as a result of a claim as above – if caused by or in connection with the Supplier's default under a Supply Contract or the negligence of the Supplier or its subcontractor.

Intellectual Property: Other than any drawings or specifications provided by the Council to the Supplier, the Supplier warrants that the Works will not infringe the Intellectual Property of any third party.

The ownership of Intellectual Property produced as a result of this agreement vests solely in the Council immediately on its creation.

The Supplier is granted a royalty free non-transferrable non-exclusive licence to use any Intellectual Property:

- (a) Produced as a result of this agreement; or

Relating to the drawings and specifications or the Confidential Information provided by the Council to the Supplier;
Solely for the purpose of completing the Works and for no other purpose.

Work Health & Safety and Return to Work SA: If applicable:

(a) The Supplier must comply with the Work Health and Safety Act 2012, any regulations made under it and any associated policies adopted by the Council, and must ensure that its employees and contractors comply with all regulations, notices and codes of practice having application to this agreement;

- (b) The Supplier must comply with the Return to Work 2014 (SA) and any regulations made under it;
- (c) The Supplier must comply with all reasonable directions and procedures relating to security and work health and safety as required by the Council; and
- (d) The Supplier must immediately notify the Council of any incident or accident arising from the performance of this agreement, including any incident or accident involving the public.

WorkCover: Where applicable:

- (a) The Supplier must be registered as an employer under the Return to Work Act 2014 and that it pays all levies due thereunder in respect of its employees engaged in or about the Supply.
- (b) The Supplier agrees to indemnify the Council in respect of any action, claim, demand, suit or proceedings made by an employee of the Supplier brought in connection with the Return to Work Act 2014.
- (c) The Supplier (in an individual) shall have or take out and keep current a personal accident and sickness insurance policy for a period from the commencement of the Supply extending until the completion date of the Supply.

Confidential Information: Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes contemplated by this agreement, and agrees that it will:-

- (a) Keep confidential; and
- (b) Not use or reproduce in any form,

Any Confidential Information belonging to the other party, A party may depart from its obligations under this clause only with the written consent of the other party or as required by law or the terms of this agreement.