

## **Warrumbungle Shire Council Purchase Order - Standard Terms and Condition**

### **1. General**

These conditions apply to any Purchase Order for goods and/or services ("Goods/Services") placed by Warrumbungle Shire Council and must be read in conjunction with any contract specified in an individual Purchase Order. If there is any inconsistency between these conditions and of the contract, the contract terms and conditions will prevail.

### **2. Quality and Delivery**

The Supplier must, as specified in the Purchase Order:

- (a) Provide Goods/Services safely and appropriately to protect it from damage; and
- (b) deliver the Goods/Services:
  - (i) by the date;
  - (ii) to the place; and
  - (iii) in the quantity

### **3. Ownership and Risk**

- (a) Title in the Goods/Services will pass to Warrumbungle Shire Council on delivery.
- (b) The Supplier assumes all risk in the Goods/Services until it is accepted by Warrumbungle Shire Council.

### **4. Warranties**

- (a) In addition to any warranties implied by law, the Supplier warrants that:
  - (i) the Goods/Services are free from defects in material and workmanship and are of merchantable quantity;
  - (ii) it has a right to provide the Goods/Services;
  - (iii) the Goods/Services are free from any charge or encumbrance in favour of any third party not declared or known to Warrumbungle Shire 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;
  - (vi) the Goods/Services comply with all applicable Australian standards and legislation; and
  - (vii) the Goods do not infringe any patent, registered design, trademark or name, copyright or any other protected right
- (b) The Supplier will ensure that any warranty offered by a manufacturer of the Goods/Services is enforceable by Warrumbungle Shire Council.
- (c) For the avoidance of doubt Warrumbungle Shire Council may treat any breach of the warranties in this clause 4 by the Supplier as a repudiation of the Purchase Order giving rise to the remedies specified in clause 5.
- (d) By agreeing to provide goods and/or services in accordance with this Purchase Order the Supplier warrants that complies with the Fair Trading Act 1987 (NSW) and the Competition and Consumer Act 2010 (Cth).

### **5. Acceptance and Rejection**

- (a) Warrumbungle Shire Council may, at any time before acceptance, reject the Goods/Services if Warrumbungle Shire Council believes the Goods/Services is defective, do not comply with the warranties specified in clause 4 above or do not meet the Purchase Order. Warrumbungle Shire Council prior to rejection may unpack, inspect and test the Goods/Services for this purpose.
- (b) Warrumbungle Shire Council may, at any time after acceptance, reject the Goods/Services if Warrumbungle Shire Council believes the Goods/Services is defective, do not comply with the warranties specified in clause 4 above or does not meet the Purchase Order, provided that the defect could not have been discovered prior to acceptance.
- (c) If Warrumbungle Shire Council rejects the Goods/Services (or any part of the Goods/Services) the Supplier must comply with a requirement of Warrumbungle Shire Council to:
  - (i) collect the defective Goods/Services and replace it at the Supplier's expense; or
  - (ii) refund Warrumbungle Shire Council any amount paid for the defective Goods/Services.

- (d) The parties expressly agree that the rights of Warrumbungle Shire Council pursuant to paragraph (c) above apply notwithstanding that the matters in clause 4 are described as warranties.

## **6. Cancellation**

- (a) If the Supplier is unable to supply the Goods/Services as specified, it must promptly notify Warrumbungle Shire Council, and if the Goods/Services are completely unavailable, the Supplier may offer another Good/Service as a substitution. Warrumbungle Shire Council may accept or reject the substitute Goods/Services in its absolute discretion.
- (b) The substitution of the Goods/Services must be approved by both parties in writing.
- (c) Warrumbungle Shire Council may (at any time before delivery), cancel or change the Purchase Order. If this occurs, and:
- (i) the change causes an increase or decrease in the cost of the Goods/Services, or time required to deliver the Goods/Services, an equitable adjustment will be made appropriate to the circumstances;
  - (ii) The Supplier has already incurred any reasonable expense in satisfying the Purchase Order, Warrumbungle Shire Council will pay those expenses.

## **7. Price, Payment Terms, GST**

- (a) The Supplier must have an Australian Business Number (ABN). Warrumbungle Shire Council requests the Supplier to issue a tax invoice for the Goods/Services within twenty-eight days from the date of the Purchase Order. The Supplier's tax invoice(s) are to show all the details required by A New Tax System (Goods and Services Tax) Act 1999.
- (b) If the Supplier is not register for GST and is not required to be registered for GST, Warrumbungle Shire Council requests the Supplier to issue an invoice for the Goods/Services within twenty-eight days from the date of this order.
- (c) A (tax) invoice must identify the Purchase Order Number. Each (tax) invoice must also include ABN and the name of the Supplier that is recorded in the Australian Business Register for that ABN. Otherwise, PAYG Withholding (No ABN) law requires Warrumbungle Shire Council to withhold an amount from the payment and send it to the Australian Taxation Office.
- (d) Warrumbungle Shire Council will pay the Supplier within the agreed terms of payment with the Supplier.

## **8. General**

- (a) The Supplier must not assign the benefit of the Purchase Order without Warrumbungle Shire Council prior written approval.
- (b) No variation of the Purchase Order will be binding on Warrumbungle Shire Council unless in writing and signed by a duly authorised representative of Warrumbungle Shire Council.
- (c) Warrumbungle Shire Council's failure or delay to enforce a condition, or to exercise a right or remedy for breach, is not a waiver of any other breach.
- (d) These conditions will be governed by the law of New South Wales and the parties submit to the jurisdiction in that State.

## **9. Confidentiality, Publicity and Privacy**

The Supplier must:

- (a) not disclose to a third-party Council's confidential information without Council's prior written consent;
- (b) take all precautions necessary to maintain secrecy and confidentiality and prevent disclosure of Council's confidential information;
- (c) not issue any press release or otherwise publish any statement or information concerning the subject matter of this Contract without the prior written consent of Council; and
- (d) comply with all privacy laws, as amended from time to time.

## **10. Indemnity and Insurance**

- (a) The Supplier indemnifies Council from and against all actions, claims, costs, expenses and damages in respect of:
- (i) loss of or damage to any Council property, or damage of any kind suffered by Council, or
  - (ii) personal injury to any person or loss of or damage to any property arising out of or by reason of any negligent or wilful act or omission by the Supplier in the provision of the Services. Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this

Contract. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

- (b) The Supplier must (at its cost) effect and maintain:
- (i) a public liability insurance policy for an amount of not less than \$20 million for any one occurrence from the date of this Contract until completion of the Services;
  - (ii) a product liability insurance policy for an amount of not less than \$10 million for any one occurrence from the date of this Contract until completion of the Services;
  - (iii) a professional indemnity insurance policy (where applicable) for an amount not less than \$5 million if the Supplier is providing any professional advice or professional services as part of the Services, which must be maintained until 7 years following the earlier of the termination of this Contract or the completion of the Services;
  - (iv) a workers' compensation insurance policy, if required by law, in accordance with applicable law for all employees;
  - (v) an asbestos liability policy of insurance for an amount not less than \$20 million if the Services comprises any asbestos decontamination work; and
- (c) such other insurances as are agreed between the parties in writing.
- (d) The insurance required by clauses 10(b)(i), 10(b)(ii) & 10(b)(iii) must cover Council's and the Supplier's respective rights, interests and liabilities to third parties, including the liability of the Supplier to the Council.
- (e) All insurance policies established under this clause 10 must be on terms Council considers satisfactory. The Supplier must give Council evidence that the insurance policies required under this clause 10 have been established no later than 7 days after receiving a request from Council to provide such evidence.

#### **11. Chain of Responsibility**

All suppliers and contractors must comply with their Chain of Responsibility obligations under the National Heavy Vehicle law.