

Purchase Order Terms and Conditions

Version Date: February 2024

Effective from 13 March 2024

1. APPLICATION

- 1.1 These Terms and Conditions apply to any purchases made by Selwyn District Council to the exclusion of any other terms and conditions contained or referred to in any acknowledgement or order, form of contract, letter or other communication from the Supplier.
- 1.2 You may not make any alterations or changes to these Terms and Conditions and any alterations or changes that have not been agreed by way of separate contract must be disregarded when interpreting these terms.
- 1.3 If the Council and the Supplier negotiate separate terms and conditions, and such terms are agreed in writing by the Council and the Supplier, those terms and conditions will supersede these Terms and Conditions.

2 DEFINITIONS

In these terms and conditions:

Contract means the PO, these Terms and Conditions, Specifications (if any) and any other terms agreed in writing.

Council means Selwyn District Council.

Good Industry Practice means that degree of skill, care, prudence and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier of goods or services in the same type of undertaking as that of the Supplier under the same or similar circumstances.

Goods means the goods specified in the PO/ Specifications to be provided by the Supplier.

PO means the purchase order placed by the Council for the supply of Goods and / or Services.

Services mean the services specified in the PO/ Specifications to be performed by the Supplier.

Specification(s) means the technical and/or any other requirements (if any) in respect of the purchase, provided by the Council to the Supplier.

Supplier means any person, including a Contractor or Consultant, providing Goods and / or Services to the Council.

Supplier Payment Dates means the 10th and 20th of each month.

Terms and Conditions means the Terms and Conditions set out in this document.

Working Day means any day of the other than:

- a. a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
- b. if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- c. the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and
- d. a day in the period commencing with 20 December in any year and ending with 10 January in the following year.

3 ACCEPTANCE

- 3.1 A PO is an offer made by the Council to purchase the Goods and / or Services, that is deemed to be accepted along with these Terms and Conditions upon the Supplier agreeing to or commencing to supply the Goods and / or Services.
- 3.2 The Council can withdraw the PO at any time prior to acceptance by the Supplier without any liability to the Supplier.

4 PRICE

- 4.1 The price stated in the PO must be in New Zealand dollars, is exclusive of GST and any other taxes that may apply, but is otherwise all inclusive of freight, insurance and any other charges ("Price").
- 4.2 Any variation to Price must be notified in writing prior to acceptance of the PO by the Supplier.
- 4.3 Council may, acting reasonably, agree to vary the Price provided that such variation is based on direct and reasonable costs actually incurred or anticipated to be incurred by the Supplier.
- 4.4 Should Council refuse to accept a Price variation, the disputes resolution process as set out in clause 19 shall apply.

5 INVOICING & PAYMENT

- 5.1 The Council will only accept electronic copies of Invoices. All Invoices must be emailed to accounts.payments@selwyn.govt.nz and CC the Council representative responsible for the Order with the Supplier. The Invoice must note the PO reference number and the Supplier's GST number. Any invoices received without the PO number or correct GST details, will not be processed for payment and will be returned to the Supplier for resolution.
- 5.2 Correct invoices received no later than 5 Working Days prior to each Supplier Payment Date, will be processed for payment on the next Supplier Payment Date.
- 5.3 Subject to Council's verification and onboarding requirements for new Suppliers, payment will be made by way of direct credit to the Bank Account nominated by the Supplier.
- 5.4 Council will not be liable for late payment penalties if payment is delayed for any reason.
- 5.5 Invoices should show a breakdown of all labour, materials and any mileage.
- 5.6 Invoices for part orders will not be accepted unless progress payments are agreed to in advance of the Services commencing / the Goods being provided.
- 5.7 The Supplier must advise the Council if it is providing a Scheduling Activity and withholding tax is required by Law to be deducted from the payment, The Council shall deduct withholding tax where required by Law.
- 5.8 In making payment for the Goods and/or Services, we may withhold, deduct or set off any amount that was previously overpaid or any amount recoverable by us from the Supplier under the Contract or otherwise.

6 DELIVERY AND IDENTIFICATION

- 6.1 The Supplier must have a valid PO number before providing any Goods or Services to the Council.
- 6.2 The PO number must be shown on all packages, delivery notes, invoices and correspondence.
- 6.3 Where the Council has not named a place of destination, the Supplier is responsible for contacting the Council to obtain delivery instructions.
- 6.4 Each consignment shall be accompanied by a delivery note stating the description of the Goods.

- 6.5 Partial delivery may be accepted at the Council's discretion.
- 6.6 All Goods and / or Services shall be delivered within the time frame specified in the PO. Should any delay occur, the Supplier must ensure that the Council is notified as early as possible, and before the date of delivery as shown on the PO.
- 6.7 The Council reserves the right to void or cancel the order if not delivered within the agreed time frame and will not be liable to the Supplier for any losses incurred or suffered.
- 6.8 All Goods must be adequately packaged to prevent deterioration or damage whilst in transit.
- 6.9 If any Goods are not accepted by Council, the removal of any Goods delivered is at the obligation and cost of the Supplier.
- 6.10 The Supplier must obtain from the Council an acknowledgment of delivery of all orders.

7 REJECTION OF GOODS

- 7.1 The Council reserves the right to have the Goods inspected or tested before, on or after delivery, by an officer appointed by the Council, and the Supplier shall facilitate inspection or testing when required.
- 7.2 The Council may reject any Goods that are of inferior quality, contrary to the Specifications for the Goods, in an unsatisfactory condition, or not functioning in the way they are designed to function.
- 7.3 For any such rejected Goods the Supplier must, at the Council's sole option and at the Supplier's sole risk and expense, either:
 - a. repair or replace the Goods and reimburse the Council for any loss of function attributable to the Goods; or
 - b. remove the Goods and reimburse the Council in full for any payments made by the Council in respect of the Goods.

8 STANDARD OF SERVICES

- 8.1 The Supplier will exercise due skill and care in providing the Services to the Council in accordance with any Specifications and requirements which the Council advises and in accordance with Good Industry Practice using appropriately trained, qualified and experienced personnel. If the Council considers that the Services have not been provided to the required standard then,

without limiting any other rights it has under law, the Council may:

- a. Reduce the price payable for such Services; or
- b. Rectify or engage another person to rectify the Services, with the cost of such work being a debt due from the Supplier to the Council payable on demand.

9 INTELLECTUAL PROPERTY

- 9.1 Any intellectual property created by the Supplier during the performance of the Services is the exclusive property of the Council.
- 9.2 The Council must be informed if anything used to deliver the Goods or Services belongs to any third party. The Supplier must ensure that the Council has all the necessary rights (and documentation) to fully enjoy the full benefits of the Goods or Services.
- 9.3 The Supplier warrants to the Council that ownership (where intended), possession, use, modification or resale of any deliverable supplied will not infringe any third-party rights, and the Supplier will indemnify the Council from any related claims or proceedings. The Council may freely participate in any infringement proceedings.

10 TITLE AND RISK

- 10.1 Title does not pass to the Council until the earlier of:
 - a. inspection having occurred with confirmation in writing by the Council of its acceptance of the Goods, or
 - b. the expiry of 5 Working Days after delivery to the address specified in the PO.
- 10.2 Every risk to any deliverable remains with the Supplier until completion of delivery and acceptance of the Goods. Anything involved in delivery or acceptance is provided at the Supplier's every risk and cost.

11 RELATIONSHIP

- 11.1 The Supplier is and shall remain at all times an independent contractor and is not a servant, employee, partner or agent of Council.

12 INDEMNITY

- 12.1 The Supplier acknowledges that to the maximum extent permitted by law the Supplier indemnifies the Council, its officers, employees and agents against any liability,

loss, damage or costs suffered or incurred by the Council arising directly or indirectly out of or in connection with the provision of Goods and or Services by the Supplier.

- 12.2 This indemnity survives the termination of this Contract.

13 REGULATORY CAPACITY

- 13.1 To the extent that Council has regulatory authority or powers (**Regulatory Capacity**), this Contract does not bind or fetter us in our Regulatory Capacity.
- 13.2 The Supplier will not be entitled to any damages or other payment should we, acting in our Regulatory Capacity, either decline any consent or permission, issue any consent or permission on terms that are unsatisfactory to any party or for any act or omission by us in our Regulatory Capacity.

14 WARRANTIES

- 14.1 In addition to any warranties implied by law, the Supplier warrants that the Goods together with their components, supplied by the Supplier pursuant to this Contract are:
 - a. designed, manufactured, delivered and operated in compliance with all applicable user requirements, Specifications and standards;
 - b. new and unused on delivery unless specified otherwise in each case by the Council;
 - c. free from any defects and fit for the purpose intended by the Council;
 - d. be appropriately packaged, packed and securely stored until completion of Delivery and installation by the Supplier (if applicable) to minimise the risk of damage, deterioration and theft;
 - e. where applicable, be properly installed and integrated into, and will be compatible with and will not damage, the Council's systems and other property;
 - f. be free from any security interest as defined in the Personal Property Securities Act 1999;
 - g. for at least 24 months (or such longer period as is reasonable taking into account the nature of the Goods) from the date of Delivery;
 - h. be fit for the expected use and purpose;
 - i. be free from any defect in design, materials, workmanship or title; and

- j. will not infringe any third party's intellectual property rights.
- 14.2 In addition to the warranties implied by law, the Supplier warrants that the Services will be performed in accordance with the Specifications and with the highest degree of care, skill and diligence expected of a provider of services equivalent or similar to the Services. The Supplier further warrants that any pre-existing and new intellectual property incorporated in the Services will not infringe the intellectual property rights of any third party.
- 14.3 The Supplier will promptly remedy any breach of the warranties set out in clauses 14.1 and 14.2 to the Council's satisfaction. If requested by the Council, the Supplier will replace, repair or upgrade any faulty Goods and reperform the Services and provide a temporary solution while the breach is being remedied. Any components of the Goods replaced or upgraded within a warranty claim period will be new and unused and will not be charged to the Council. The warranty period set out in clause 14.1(g) is to be suspended for the period from when the breach of warranty is notified to the Supplier until such time as the breach of warranty is remedied in accordance with this clause.
- 14.4 The Supplier will, to all extent possible and at its cost, assign to the Council the benefit of any warranty or guarantee received from any other person in respect of deliverables supplied, so that the Council may have recourse against those persons.
- 14.5 This clause 14 survives completion and/or termination of this Contract.

15 LEGAL COMPLIANCE

- 15.1 The Supplier will ensure that the provision of all Goods and Services is in accordance with all laws, regulations, bylaws, industry codes of practice, ethical and professional standards, and licensing, consent and permit requirements that are applicable to the Supplier's supply of the Goods or performance of the Services.

16 PUBLICITY AND REPUTATION

- 16.1 The Supplier will not do anything which brings, or would be likely to bring, the Council into disrepute.

- 16.2 The Supplier will not represent or publicise in any way to anyone that it is a Supplier to the Council. The Supplier will not allow media releases or advertising that names or suggests the Council, without the Council's prior written consent.

17 CONFIDENTIALITY

- 17.1 The Supplier will keep confidential and secure, and not misuse, any information of the Council which is marked or indicated as confidential, or would reasonably be expected to be proprietary, commercially sensitive or confidential.
- 17.2 Disclosure and use of information by either party is allowed to the extent required by law, or to the extent necessary to perform the Contract.
- 17.3 The Supplier acknowledges that the Council is subject to the Local Government Official Information and Meetings Act 1987 (**LGOIMA**). The Council is obliged to disclose Confidential Information under that Act if so requested, unless there is good reason under the terms of that Act to withhold that information. The Supplier agrees to immediately pass on any request for information that it receives from a regulator or third party under the LGOIMA to Council for instruction and/or action.
- 17.4 This clause 17 shall survive the completion or termination of this Contract.

18 HEALTH AND SAFETY

- 18.1 The Supplier will comply with all relevant health and safety legislation, regulations, applicable codes of practice and standards, the Council's health and safety policies and procedures and any standard operating procedures which may be connected with the provision of the Goods and/or Services.
- 18.2 The Supplier must ensure it:
- Takes all practicable steps to ensure the health and safety of all personnel of the Supplier, and any other parties associated with the Services, including the Council, workers, visitors, subcontractors, service providers, the public and any visitors to any area under the control of the Supplier;
 - Comply with all reasonable directions given by the Council in relation to the health and safety in connection with this Contract.

19 DISPUTES

- 19.1 If any dispute arises in connection with Contract either party may trigger the provisions of this clause by giving written notice of the dispute to the other party (**Dispute Notice**).
- 19.2 The parties shall endeavour in good faith to resolve the dispute within 20 Working Days of receipt of the Dispute Notice through negotiations.
- 19.3 If the dispute is not resolved through negotiations, either party may, after 20 Working Days of receipt of the Dispute Notice, request mediation which shall be conducted in Selwyn and at a cost which is to be shared equally between the parties, with each party meeting their own costs.
- 19.4 The Supplier must continue to perform the Services until the dispute is resolved and unless the Council directs otherwise.
- 19.5 Neither party may commence legal proceedings in relation to a dispute until this process has been exhausted (however, nothing in this clause restricts the right of either party to seek injunctive relief or the rights to terminate or suspend this Contract).

20 CLAIMS AGAINST SELWYN DISTRICT COUNCIL

- 20.1 In no event will the Council be liable for any injury, loss or damage to any person or property of any kind whether directly or indirectly caused or contributed to, by or in the course of the Supplier providing the Goods and/or Services.
- 20.2 In the event that notwithstanding clause 20.1 the Council is found to be liable to the Supplier under or in connection with this Contract, the Council's liability shall be limited to the Price.
- 20.3 This clause 20 survives completion or termination of this Contract.

21 SUSPENSION AND TERMINATION

- 21.1 If the Council reasonably considers that the Supplier has breached or failed to comply with any clause of this Contract, or has an inability to perform the required obligations, the Council shall give notice to the Supplier of such a breach or failure (**Breach Notice**). If, within 10 Working Days of receipt of the Breach notice, the Supplier has not remedied the breach or failure, the Council may suspend or terminate the Contract by notice in writing to

the Supplier and may select an alternative supplier of the Goods or Services. In this case, any additional costs incurred by the Council may be recovered from the original Supplier.

- 21.2 The Council may without cause terminate the Contract by providing the Contractor with 30 days' written notice at any time.
- 21.3 Termination or suspension of the Contract is without prejudice to the rights and obligations of the Parties' accrued up to and including the date of termination or suspension.

22 FORCE MAJEURE

- 22.1 Neither the Council nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of this Contract caused by any occurrence beyond its reasonable control including, without limitation, fire, strike(except where it involves a party's own labour force), disturbance, riot, war, act of god and government order or regulation, provided that the party affected by such occurrence notified the other party in writing within five Working Days of the commencement of that occurrence. When the party ceases to be affected by the force majeure event it must immediately recommence performing its obligations under this Contract and notify the other party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Goods or Services is delayed more than 30 days after the Delivery date specified in the Purchase Order, the Council may, without penalty and compensation to the Supplier, terminate the Contract.

23 GENERAL

- 23.1 The Supplier must not assign, subcontract or transfer any of its rights obligations under this Contract without the prior written consent of the Council.
- 23.2 No variation or waiver of any of the above terms and conditions shall be valid or take effect, unless agreed to in writing by the Council.
- 23.3 The Supplier must comply with all laws and standards applicable to the supply of Goods and/or the Services.
- 23.4 If any of these terms and conditions is or becomes invalid, unenforceable, or illegal, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining

terms and conditions which shall continue in full force and effect.

- 23.5 Any notice to be given under this Contract must be in writing and must be delivered or sent by post or e-mail to the other party's address for notices set out in the PO.
- 23.6 This Contract shall be governed by New Zealand law, and the New Zealand courts have exclusive jurisdiction in respect of this Contract.