

PURCHASE ORDER TERMS AND CONDITIONS

1 General

- i. No Supplier is entitled to supply goods or services to Council without a duly authorised Purchase Order (PO) from Council.
- ii. These Terms and Conditions apply to all PO's for goods and services placed by Council with the Supplier where there is no existing and valid written contract in place between the parties that would be applicable to the supply of those goods and services.
- iii. The acceptance of a PO or the supply of goods or services by the Supplier pursuant to a PO (whichever occurs first) unless advised to the contrary in writing constitutes acceptance of these Terms and Conditions by the Supplier.
- iv. All additions and alterations to these Terms and Conditions must be in writing and attached as special conditions to the PO.
- v. In the event of any inconsistency between these Terms and Conditions and:
 - a) special conditions, the special conditions prevail;
 - b) where there is a pre-existing contract the terms of the pre-existing contract prevail; or
 - c) where there are drawings or specifications the drawings or specification prevail (and if any inconsistency between drawings and specifications the drawings prevail).
- vi. The official PO number **MUST** be quoted on all delivery notes, invoices and correspondence. All invoices are to be emailed to accounts payable@nothernbeaches.nsw.gov.au. If the PO number does not appear on the invoice, payment may be delayed and not processed within the normal payment terms.
- vii. Neither the Supplier nor Council shall assign or purport to assign this PO and these Terms and Conditions or any part thereof without the prior written consent of the other.

2 Goods and Services

- i. All goods must be new and comply with the specification or description in the PO and unless otherwise agreed in writing by both the Supplier and Council, all goods and services must conform with all relevant Australian Standards which relate to the goods.
- ii. All services must comply with the specification or description in the PO and be provided in a proper timely and efficient manner using the standard of care, skill and diligence that would reasonably be expected from an experienced provider of such services.
- iii. Council may reject, within a reasonable time, goods that are defective. If so, Council may, by notice, require the Supplier to make good, collect and replace at no additional cost or refund Council any amount paid for the defective goods within the time specified by Council.
- iv. If the performance of any services is defective, Council may, by notice, require the Supplier to remedy the defect, complete the services, or re-do the services at no additional cost to Council within the time specified by Council.
- v. Where Council rejects any defective goods which are already installed, the Supplier shall immediately upon written direction, remove the defective goods, replace same and make good any damage to other property occasioned in such removal to the satisfaction of and all of the above shall be at no cost to Council.
- vi. In the event the Supplier does not satisfactorily comply with a notice issued by Council under clause 2(iii), 2(iv) or 2(v), Council may have the repair, modification or replacement of goods or resupply of the services undertaken by a third party (or itself) and all resulting costs and expenses will be a debt due to Council by the Supplier.
- vii. If Council does not notify the Supplier in accordance with clause 2(iii) or 2(iv), Council shall be deemed to have accepted that the goods or services comply with the Terms and Conditions of this PO. This will not, however, constitute a waiver of any right which, but for the acceptance Council would have had arising from any defect in or want of compliance with the specifications for the goods or services later discovered by Council.
- viii. Council may return any goods to the supplier that have been incorrectly ordered by Council. Council will pay only the freight and handling charges associated with effecting the return of such goods to the Supplier.
- ix. If requested by the Council, the Supplier must provide evidence, acceptable to Council, that any Services are in accordance with the PO. The Services are completed when an authorised officer of Council certifies in writing to the Supplier that the Supplier has complied with all of its obligations under this PO.
- x. If requested by Council, the Supplier must provide evidence, acceptable to Council that the goods are in accordance with this PO.
- xi. Goods are accepted by Council upon the later of:
 - a) a request made by Council in accordance with clause 2(x) where Council determines at its discretion that the evidence provided by the Supplier is satisfactory; or
 - b) the passage of a reasonable period of time for Council to inspect the goods after delivery.
- xii. Payment for the goods or the signing of delivery documents does not constitute acceptance of goods.

3 Passing of Title and Risk

- i. The Supplier must be capable of passing title in the goods free of encumbrances and all other adverse interests at the time they are delivered to Council.
- ii. Title to the goods, free of encumbrances and all other adverse interests, will pass to Council on the deliverables being delivered to Council at the destination stated in the PO.
- iii. The goods are at the risk of the Supplier until acceptance in accordance with clause ii.
- iv. The Supplier must take out and maintain all necessary insurance to insure the deliverables against loss or damage until acceptance in accordance with clause 2.

4 Timing and delivery

- i. The Supplier must deliver the goods or supply the services within the time, and at the location, specified in the PO.
- ii. If the goods are not delivered or the services are not supplied within the time and/or at the location specified in the PO, Council may terminate the PO unless the delay is caused by factors outside of the reasonable control of the Supplier as determined by Council.
- iii. If the goods are lost or damaged in transit, the Supplier must replace them at the Supplier's cost.
- iv. The Supplier must transport and store all hazardous materials and dangerous goods in accordance with all applicable Australian Standards. The Supplier must provide Council with

the relevant materials safety data sheet for all such materials and goods before delivery. Any items appearing on the PO that are unable to be supplied by the requested delivery date must be advised to the Officer noted on the PO. Council then reserves the right to alter or cancel part or all of the order that will not be supplied by the required date.

- v. The goods must be accompanied by all relevant manufacture and supplier instructions and all relevant manufacturer and supplier warranties must be transferred to Council.
- vi. Delivery is not complete until the goods have been accepted by Council.

5 General Delivery Instructions

- i. Unless otherwise instructed, all deliveries to Council's store are to be between 0730 and 1500 hours. Deliveries outside of these times will not be accepted. Deliveries to Council's administration buildings are to be within business hours of 0830 and 1700.
- ii. Delivery Dockets are to show:
 - a) Quantity, description and name of material;
 - b) Council's PO Number;
 - c) Council's Contact Person; and
 - d) Delivery Docket Number and date (separate number for each delivery).
- iii. Hazardous materials are to be clearly identified. If insufficient warning is shown, goods may be rejected. All goods supplied must comply with the relevant Australian Standards and be supplied with safety instructions.
- iv. If goods are delivered on a pallet, the pallets are to be of a good quality and appropriate for the type of goods delivered. Pallet weight is not to exceed 1,200kg per pallet.

6 Price and Invoicing

- i. The price set out in the PO includes all costs associated with packing, insurance, freight, delivery, duties and taxes (including GST where the Supplier is registered for GST) and any other applicable costs and charges.
- ii. The Supplier must only submit valid tax invoices once all products have been delivered or completed to Council's satisfaction. The invoice must include:
 - a) the correct address;;
 - b) Council's PO number;
 - c) the goods and/or services supplied;
 - d) the Site and date of supply;
 - e) if services are charged by time, the time spent by the personnel; and
 - f) where requested, be accompanied by documentation substantiating the amount claimed.
- iii. Council may reject without payment any invoice that is not a tax or which fails to quote the PO Number.

7 Payment of Account

- i. Council will attend to payment of a valid tax invoice within thirty (30) days from receiving the tax invoice. This may be varied where Council accepts a discount by the Supplier for early payment.
- ii. Without limiting Council's rights under any other provision of this PO, Council may deduct from or set off against any moneys which may be or thereafter become payable by Council to the Supplier:
 - a) any debt whatsoever due from the Supplier to Council; and
 - b) any Claim that Council may have against the Supplier under or by virtue of any provision of this PO or otherwise at law or in equity.
- iii. Payment does not constitute an acceptance by Council that the goods and/or services are not defective and will not in any way effect Council's rights under this PO.

8 Termination

- i. If the Supplier:
 - a) becomes bankrupt or insolvent; or
 - b) is unable to complete the PO for the provision of goods and/or servicesthen, Council may, without prejudice to any other rights or remedies it may have hereunder, immediately terminate this PO, forfeit any retention, take possession of any premises, materials, tools and appliances and finish the work by whatever means it may deem expedient. Council shall not be liable to pay the Supplier any further payments until goods delivery or services are completed. If the unpaid balance of the purchase price shall exceed the expense of finishing the work, then such excess shall be paid forthwith by the Supplier and/or deducted as the case may be to Supplier's account.
- ii. If a party breaches an essential term of this PO, the other party may give notice requiring the breach to be remedied within seven (7) days. If it is not remedied, the party giving the notice may terminate this PO.
- iii. Council may terminate the PO on seven (7) days' notice for any reason, including for Council's convenience. If so, the Supplier must cease performing this PO and minimise any arising loss. Council will pay the price for work completed up to the date of termination and costs unavoidably incurred up to the date of the termination and arising from the termination. Council will not be liable for any other loss or damage.

9 Dispute Resolution

Any dispute between Council and the Supplier arising out of or in any way connected with this PO, which is not resolved by the parties within fourteen (14) days after service of written notice of the dispute (stating that it is given under this clause 9) by either party on the other party must be referred for decision to an arbitrator.

If Council and the Supplier are unable to agree on the appointment of an arbitrator within thirty (30) days after service of the written notice of the dispute, either party may request the President of the Resolution Institute to appoint an arbitrator. The arbitration is to be conducted in accordance with the Rules for the Conduct of Commercial Arbitrations of the Resolution Institute.

10 Notice

All notices, requests, variations, and other communications by both parties are to be in writing and delivered promptly to the addresses stated in the PO.

11 Warranties

- i. The Supplier warrants to Council that the goods and/or services:
 - a) comply with the description in the PO and conform with all specifications, drawings, samples or other descriptions furnished by Council to the Supplier;
 - b) are fit for the purpose for which they are intended;
 - c) are of the highest quality and free from any defects in design, manufacturing, materials and

workmanship;

- d) comply with all applicable Australian Standards and legislation;
 - e) are free of all liens, securities and encumbrances; and
 - f) do not breach the intellectual property rights of any person or entity.
- ii. The Supplier warrants and represents to Council that:
 - a) it has unencumbered title to all goods and use of them will not infringe the rights of any third party;
 - b) it holds and will maintain all licences, permits and authorities to perform this agreement;
 - c) it will remain fully responsible for all services and all information created or developed or required to be created or developed under this agreement provided by the Supplier, irrespective of any review or acceptance of those Services or information by Council;
 - d) the use of any goods or performance of the services will not infringe upon, or contribute to the infringement of, any intellectual property rights;
 - e) it is not insolvent within the meaning of s 95 *Corporations Act 2001* (Cth); and
 - f) it has not relied upon any representation of, or information provided by, Council which is not expressly stated or included in this PO.
 - iii. All warranties, conditions, promises, undertakings, covenants and other provisions implied by law relating to the goods and/or services or their supply and delivery form part of these Terms and Conditions and do not exclude, restrict or modify the application of any provision of the Australian Consumer Law.
 - iv. The Supplier will ensure that any warranty offered by a manufacturer of goods is enforceable by Council.

12 Indemnity

The Supplier indemnifies Council against all claims, liabilities, loss, damage or penalties for any loss or damage to persons or property if caused or contributed to by the negligence, misconduct or breach of this PO by the Supplier. Each indemnity is a continuing obligation separate from the Supplier's other obligations and survives expiry or termination of this PO.

13 Intellectual Property

The Supplier warrants that it is the owner of or, where appropriate, is the registered user of, any patents, trademarks, copyright, data or trade secrets connected directly or indirectly to the goods or services. The Supplier indemnifies the Council against any claims made by third parties in respect of the use of intellectual property supplied and/or developed under this PO. This clause survives expiry or termination of this PO.

14 Insurance

- i. The Supplier must hold and maintain appropriate insurance (including where appropriate, public liability, product liability, material damage, motor vehicle liability and CTP, workers' compensation and professional indemnity insurance) to cover the risk for the goods and/or services under this PO that represent a standard of good practice expected of a competent and prudent supplier of such goods and/or services. The Supplier must provide a certificate of currency for these insurances to Council on demand. The Supplier must maintain the insurances required under clause 14(i) for the term of this PO.

15 Risk Management and Work Health and Safety

- i. The Supplier must comply with all relevant obligations with regard to the Work Health and Safety Act 2011 and its regulations to manage risk to health and safety of its employees, contractors or other personnel, including members of the public.
- ii. The Supplier must comply with all local environmental controls to protect the built and natural environment, including compliance with the Protection of the Environment Operations Act 1997 applicable to the goods and/or services.
- iii. If goods are hazardous substances, relevant material safety data sheets must be supplied. If the goods are plant and equipment, hazard assessment information must be applied.

16 Miscellaneous provisions

- i. The law in force in the State of New South Wales governs these Terms and Conditions. The parties submit to the exclusive jurisdiction of the courts of New South Wales.
- ii. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions of these Terms and Conditions will continue and have full force and effect.
- iii. A failure by Council to enforce a provision of the PO will not be construed as in any way affecting the enforceability in any other instance or the enforceability of the PO as a whole.
- iv. The fact that Council fails to do, or delays in doing, something it is entitled to do under this PO, does not amount to a waiver of its right to do it.
- v. The Supplier must not, without prior written consent of Council, subcontract, assign or novate any rights or obligations in this PO or sub-contract any part of the performance of this PO.
- vi. If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Terms and Conditions, but the rest of this PO is not affected.
- vii. Council shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising from this PO if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond the reasonable control of Council and not a consequence of Council's negligence.
- viii. Where there is more than one Supplier then the liability of each shall be joint and several.
- ix. The rights and remedies provided in this PO will not affect any other rights or remedies available to Council.
- x. The Supplier and its personnel must keep confidential all information which is reasonably regarded as confidential by Council and which the supplier and its personnel receives or comes across in the process of performing its obligations under this PO. These obligations continue indefinitely beyond the end of this PO.
- xi. The Supplier acknowledges that Council may be required to publish information concerning this PO in accordance with "GIPA Act" under any similar or replacement legislation to the GIPA Act or by the Auditor-General or Parliament.