



Mansfield Shire Council – Purchase Order Terms & Conditions

PART 1 - PRELIMINARY

These are the Terms and Conditions which apply to a Purchase Order issued by Mansfield Shire Council for the supply of goods, the provision of services, or the carrying out of works.

Part 2 contains general requirements applying to the supply of goods, provision of services and performance of works.

Parts 3, 4 and 5 contain specific requirements respectively relating to the -

- (a) Supply of Goods (**Part 3**);
- (b) Provision of Services (**Part 4**); and
- (c) Performance of Works (**Part 5**).

The purpose of this division is to assist the Provider to understand the general and specific contractual obligations which attach to the acceptance of a Purchase Order.

PART 2 – GENERAL REQUIREMENTS

2.1 Definitions

“Contract” means the acceptance by the Provider of a Purchase Order issued by Council and these Terms and Conditions.

“Council” means Mansfield Shire Council.

“Provider” means the company or person appearing on the Purchase Order authorised to supply goods, provide services or perform works.

“Purchase Order” means the document titled as such issued by Council to the Provider.

2.2 Acceptance of Contract

By accepting the Purchase Order, the Provider agrees to be bound by these Terms and Conditions and by doing so enters into a binding contract with Council.

2.3 Conduct Principles

The Provider, including its employees, contractors and agents, must act –

- (a) in a diligent manner;
- (b) with a level of care, skill, knowledge and judgement required, or in accordance with the applicable highest professional standards and best industry practice;
- (c) in strict compliance with the provisions of the Purchase Order; and
- (d) in accordance with any Acts, Regulations and Local Laws which are in any way applicable to the performance of the Contract, including the obligation to provide and maintain a safe working environment.

2.4 Payment

Council agrees to pay the Provider the amount specified in the Purchase Order following satisfactory completion of the Contract or parts of the Contract.

The Purchase Order is issued on a firm price basis, including GST, in accordance with the price(s) listed in the Purchase Order.

Unless the Purchase Order provides otherwise, the price is inclusive of all charges for packaging, packing, insurance and delivery.

Where applicable, payment under the Purchase Order must be claimed on a Tax Invoice that includes the Australian Business Number of the Provider. The invoice must be submitted to Council no later than the 28th day of the month. Payment shall, unless otherwise stated in writing, be made by the last day of the following month. Deductions for statutory reasons or contract retentions shall be made and advised to the Provider where applicable.

Payment will be made only by electronic funds transfer. The Provider must nominate and provide details of a bank account for this purpose.

2.5 Insurance

The Provider must, at all times be the holder of a current public liability policy of insurance providing coverage for an amount per event of at least \$10,000,000.

The Provider must provide Council with certificates of currency in respect of all

necessary insurances within two days of a written request by Council.

If the Provider fails to comply with its obligations to insure or to provide evidence of insurance Council may immediately terminate the Contract.

2.6 Indemnity

The Provider must indemnify and keep indemnified Council from and against all actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) consequent upon, occasioned by, or arising from its performance or purported performance of its obligations under the Contract, including any act or omission involving fault or negligence by the Provider.

2.7 Termination

Council may terminate the Contract by notice in writing to the Provider if the Provider –

- (a) fails to perform any of its obligations under the Contract; or
- (b) becomes insolvent, bankrupt or being a company, goes into liquidation.

2.8 Conflicts of Interest

The Provider warrants that, at the date of entering into the Contract, no conflict of interest exists or is likely to arise in the performance of the obligations of under the Contract.

If during the term of the Contract, a conflict or risk of conflict of interest arises, the Provider must notify Council immediately in writing of that conflict of interest.

2.9 Confidentiality

Each party undertakes that it will not disclose, will ensure that its employees, agents and contractors do not disclose, and will maintain proper and secure custody of, any confidential information received during the course of the Contract which relates to the other party.

2.10 Privacy

The Provider, including its employees, sub-contractors and agents, must comply with the Information Privacy Principles contained within the *Privacy and Data Protection Act 2014*.

2.11 Sub-contracting & Assignment

The Provider must not, without Council's prior consent in writing, sub-contract or assign the whole or any part of the work under the Contract.

Despite any approval to sub-contract, the Provider remains fully responsible for the performance of its obligations under the Contract.

2.12 Governing Law & Jurisdiction

This Contract is governed by and is to be construed in accordance with the laws of Victoria.

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria and waives any right to object to proceedings being brought in those Courts.

2.13 Special Terms & Conditions

Any additional terms and conditions which appear on the Purchase Order are regarded as Special Terms and Conditions, and will prevail to the extent of any inconsistency with these Terms and Conditions.

2.14 Variation

Any variation to these Terms and Conditions is binding only if agreed to in writing and signed by both parties.

PART 3 - SUPPLY OF GOODS

3.1 Definitions

For the purposes of this Part, the following definitions apply –

“Defective” means goods which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate to incomplete.

“Delivery Address” means the place for delivery specified in the Purchase Order.

“Delivery Date” means the date by which the goods are required to be delivered to Council.

“Goods” means the goods specified in the Purchase Order.

“Merchantable Quality” means goods which reach a basic standard of quality including goods which are fit for purpose and match the description.

3.2 Application of Part

This Part applies to the supply of goods from a Provider to the Council.

3.3 Nature of Goods

The Provider must supply goods which are suitable.

Suitable goods are goods which are –

- (a) in conformity with the description contained within the Purchase Order;
- (b) of Merchantable Quality;
- (c) not Defective; and
- (d) new, unless otherwise specified in the Purchase Order.

3.4 Title & Risk

Title in the goods passes to Council upon payment of the amount specified in the Purchase Order.

Risk in the goods passes to Council when the goods are delivered to Council.

3.5 Delivery

The Provider must ensure that the goods specified in the Purchase Order are -

- (a) delivered to the Delivery Address by the Delivery Date;
- (b) suitably packed to avoid damage in transit; and

- (c) properly marked with the Purchase Order number.

If the Provider supplies incorrect goods, those goods may be returned at the Provider’s expense.

3.6 Suitability of Goods

Where Council reasonably considers the goods to be unsuitable, Council may return the goods to the Provider and upon doing so receive a full refund of any monies paid for the goods within 28 days.

PART 4 - PROVISION OF SERVICES

4.1 Definitions

For the purposes of this Part, the following definitions apply –

“Personnel” means any employees, contractors or agents engaged by the Provider to perform the Service.

“Service” means the description of the service outlined in the Purchase Order.

4.2 Application of Part

This Part applies to the provision of services by a Provider to Council.

4.3 Service Obligations

The Provider warrants that it and its Personnel are skilled, trained, qualified and competent to perform the Service and that they will perform the Service in a competent, skilled and efficient manner.

The Provider in performing the Service agrees to -

- (a) exercise due skill and care;
- (b) be aware and comply, at its cost, with all applicable laws and regulations including Occupational Health & Safety guidelines to ensure safe working practices;
- (c) comply with all lawful directions and orders given by Council’s representative

or any person authorised by Council to give directions to the Provider;

- (d) ensure that Council's premises, where utilised, are left in a secure, clean and orderly condition;
- (e) comply with any Council security requirements; and
- (f) ensure that all Personnel comply with the requirements of this Part.

4.4 Reporting

The Provider will provide all such information that Council reasonably requires including progress reports where directed.

4.5 Professional Indemnity Insurance

The Provider must maintain the amount of any professional indemnity insurance cover required under the Purchase Order.

PART 5 - PERFORMANCE OF WORKS

5.1 Definitions

For the purposes of this Part, the following definitions apply –

***"Personnel"** means any employees, contractors or agents engaged by the Provider to perform the works.*

***"Works"** means the works required to be carried out by the Provider to the satisfaction of Council as specified in the Purchase Order.*

5.2 Application of Part

This Part applies to the performance or carrying out of works as specified within the Purchase Order.

5.3 Performance Obligations

The Provider warrants that it and its Personnel are skilled, trained, qualified and competent to perform the Service and that they will perform the Works in a competent, skilled and efficient manner.

5.4 Performance of Works

The Provider when performing the Works agrees to –

- (a) exercise reasonable skill, care and diligence;
- (b) comply with all applicable standards, safety regulations, codes of practice and any specific requirements resulting from the Provider's trade, profession or expert knowledge;
- (c) be aware and comply, at its cost, with all applicable laws and regulations including Occupational Health & Safety guidelines to ensure safe working practices;
- (d) not vary the Works from the description contained in the Purchase Order without the prior written consent of Council;
- (e) complete the Works to the satisfaction of Council with due expedition, without delay and within the time specified in the Purchase Order or such further time as agreed in writing by Council;
- (f) provide, erect and maintain all barricades, fences, signs, lighting and temporary works necessary for the protection of the Works, other property and for the safety and convenience of the public;
- (g) provide all supervision, labour, materials, plant, transport and temporary works which may be necessary;
- (h) be responsible for the care of the works from the date of commencement until completion including the care, storage and protection of unfixed items and items provided by Council;
- (i) not vary the price of the Works from the price agreed or undertake works which will incur incur additional fees or charges without the prior written consent of the Principal; and
- (j) ensure that all Personnel comply with the requirements of this Part.

SPECIAL TERMS AND CONDITIONS

(To be inserted if required)