

General Terms and Conditions of Purchase

DEFINITIONS AND INTERPRETATION

For the purposes of these Terms:

Acceptance has the meaning set out in clause 0 and "Accept" shall be construed accordingly;

Agreement means the Purchase Order and these General Terms and Conditions of Purchase (Terms);

Business Day means any day other than a Saturday, Sunday or public holiday in New Plymouth, New Zealand;

Goods and/or Services shall mean any goods, services and other items to be provided by the Supplier as detailed in a Purchase Order;

GST means goods and services tax charged under the GST Act;

GST Act means the Goods and Services Tax Act 1985;

Intellectual Property means patents, registered designs, patents, trademarks, domain names, copyright, rights in computer software and databases, confidential information, trade secrets and all other intellectual property, in each case whether registered or unregistered and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

Personnel mean the person or persons to be provided by the Supplier and/or Sub-Contractor for the purposes of performing the Goods and/or Services;

Purchase Order means an order for Goods and/or Services issued on the Council's standard computer-generated form and submitted to the Supplier;

Sub-Contractor shall mean any party to whom the Supplier has sub-let the supply of Goods and/or Services or any portion thereof and each of their respective subcontractors;

Tax Invoice means the definition given to that term in section 2 of the GST Act.

AGREEMENT

Appointment: The Council agrees to purchase the Goods and/or Services from the Supplier and the Supplier agrees to supply the Goods and/or Services in accordance with the specifications set out in the Purchase Order and these Terms.

Application: Subject to clause 0, these Terms will apply to all Purchase Orders placed by the Council for the supply of Goods and/or Services from the Supplier.

No Exclusivity: The Supplier acknowledges that it is being engaged by the Council on a non-exclusive basis and that the Council may appoint one or more additional suppliers to provide Goods and/or Services that are the same, or similar to those being provided by the Supplier.

No Minimum Order: The Supplier acknowledges that nothing in these Terms commits the Council to purchase any minimum quantity of Goods and/or Services from the Supplier.

Other Agreement: To the extent that the parties have executed a separate agreement covering the subject matter of any Purchase Order, the terms of that agreement will supersede and prevail over these Terms and these Terms shall not apply to that Purchase Order.

Priority of Terms: No conditions or terms contained in any quotations, offers, acknowledgements, letters, advice notes, delivery notes, invoices or other communications of the Supplier shall annul or vary any of these Terms.

TERM

Term: This Agreement will come into effect on the date the Council approves the Supplier as a New Supplier following receipt of a duly completed and signed *New Supplier Request Form – Permanent Supplier* showing acceptance of these Terms, and will continue in force until terminated under clause 16.

PRICE, INVOICING AND PAYMENT

Consideration: In full consideration of the satisfactory provision of the Goods and/or Services, the Council shall remunerate the Supplier in accordance with the rates and prices stipulated in the

Purchase Order (Fee). The Council shall pay for the Fee upon receipt of an invoice in accordance with clause 0.

Price: The Fee shall include and itemise the costs of any GST, levies or tariffs, freight, delivery, packaging, handling, storage and insurance and any other expense relating to the Goods and/or Services.

Taxes and other Charges: With the exception of GST, all taxes, duties and charges (including fines, penalties and interest) that are or may be imposed or levied in New Zealand or overseas in connection with any Purchase Order will be borne by Supplier.

Invoice: The Supplier shall submit valid Tax Invoices in respect of the Goods and/or Services delivered following Acceptance of the Goods and/or Services. All Invoices submitted **must:**

show the relevant Purchase Order number and such other information as may reasonably be required, as notified by the Council from time to time;

if the Supplier is GST registered, display the words "Tax Invoice", include the Supplier's GST number and show that the amount payable includes GST;

be emailed to accountspayable@npdc.govt.nz or posted to NPDC, Private Bag 2025, New Plymouth 4342.

Defective Invoices: Invoices that do not comply with the requirements of clause 4.4 will be returned to the Supplier for amendment and return, and the Supplier acknowledges that payment may be delayed as a result.

Payment: Payment will be made by the Council on or before the 20th day of the month following receipt of an invoice in accordance with clause 0. All payments will be made to the Supplier by electronic funds transfer into the bank account nominated by the Supplier.

Disputed Invoice: If the Council disputes any portion of any amount appearing as payable on any invoice issued by Supplier under this Agreement:

the Council will notify the Supplier of such dispute at the earliest reasonable opportunity;

the undisputed portion of the invoice will remain payable on the due date for payment under clause 0;

the Council will not be obliged to pay the disputed portion of the invoice until the parties' dispute has been resolved in accordance with clause 0.

DELIVERY AND ACCEPTANCE

Delivery Requirement: Unless otherwise agreed by the parties, the Supplier agrees to:

deliver the Goods to, or perform the Services at, the "Deliver To" address and in accordance with any other specific delivery instructions set out in the Purchase Order; and

in the case of Goods, deliver the Goods on the "Date Required" stated in the Purchase Order; or

in the case of Services, perform the Services on the "Date Required" in the Purchase Order.

Packaging: The Supplier shall be responsible for packaging the Goods so as to protect them during transportation and unloading at the Council's designated delivery address.

Delay: If the Goods are not received or the Services are not performed by the "Date Required" stated in the Purchase Order, the Council may cancel the Purchase Order in respect of all or part of the uncompleted work and make payment only for those Goods received and Services performed.

Acceptance: Goods and/or Services provided by the Supplier shall not be deemed to have been accepted by the Council until the Council has inspected the Goods and/or Services and confirmed that they are compliant with the requirements and specifications set out in the Purchase Order (**Acceptance**). Such inspection shall be made by the Council within a reasonable time after the "Date Required" in the Purchase Order. The signing of delivery dockets and/or similar on behalf of the Council shall not constitute Acceptance.

Rejection: Notwithstanding that ownership may have passed in accordance with clause 0, the Council may reject Goods and/or Services supplied if they are unmerchantable, unfit for the Council's purpose, defective or that do not comply with the requirements and specifications set out in the Purchase Order.

RISK AND TITLE

Risk: Risk in Goods shall pass to the Council upon delivery into the Council's possession.

Title: Without prejudice to the Council's rights of rejection, title to and ownership of any Goods (and materials in the case of the supply of Services) shall pass to the Council on delivery.

WARRANTIES

Supplier Warranties: The Supplier warrants that all Goods and/or Services shall be provided with reasonable care and skill and in accordance with generally recognised commercial practices and standards by appropriately trained, competent and qualified Personnel and shall:

conform to any specifications in the relevant Purchase Order;

be of satisfactory quality, free from defects and fit for their intended purposes (whether such purpose is implied or expressly stated in the Purchase Order);

comply with all applicable statutes, regulations; and any internal policies of the Council notified to the Supplier from time to time;

be free of any third party mortgage, lien, claim, title or interest such that the Supplier is able to provide good title to the Council;

be provided to the Council at a price that is no less favourable than the price paid by any purchaser for the same Goods and/or Services, in substantially similar circumstances;

be suitable for use by the Council; and

not infringe any intellectual property rights of any third party.

Duration: The Supplier warranties in clause 0 will continue in effect until the expiry of any warranty period normally provided by the Supplier for Goods and/or Services of the type supplied, or a twelve month period commencing on the date of Acceptance of the Goods and/or Services by the Council, whichever is later.

Repair/Replace: The Council shall promptly inform the Supplier in writing of any Goods and/or Services that fail to meet the warranties set out in clause 0. The Supplier shall, with all possible speed and without cost to the Council, re-perform the Services and/or replace or repair the Goods or any part thereof if the Goods and/or Services fail to meet the warranties.

Additional Warranties: The Council's rights under this clause 0 are in addition to and not in substitution of any express, implied statutory or other rights. Without limiting the above, if a manufacturer or importer provides additional warranties in respect of any Goods, the Supplier must pass on the benefit of those warranties and assist the Council in enforcing any rights it or the Supplier may have under those warranties for the benefit of the Council.

HEALTH, SAFETY AND LEGAL COMPLIANCE

Supplier Responsibility: The Supplier shall at all times perform, and shall ensure that its employees, sub-contractors and agents perform, its obligations under this Agreement and any Purchase Order in a safe and responsible manner and observe and comply with all applicable laws including, without limitation the Health and Safety in Employment Act 1992, rules, regulations, codes, industry standards and the relevant Council health and safety requirements (as notified to the Supplier from time to time).

Council Responsibility: The Council shall at all time ensure that it complies with its obligations under all applicable laws, including without limitation, under the Health and Safety in Employment Act 1992 and all relevant rules, regulations and codes made thereunder.

Authorisations/Consents: The Supplier must obtain all necessary consents and/or authorisations in relation to any Services to be performed under this Agreement.

Council as Regulatory Authority: The Supplier acknowledges that the Council has regulatory authority/powers (**Regulatory Capacity**) and that this Agreement does not bind or fetter the Council in its Regulatory Capacity.

INSURANCE

Policies: The Supplier must, at its cost, have and maintain insurance cover in respect of the Supplier's obligations under this Agreement for so long as the Supplier supplies Goods and/or Services to the Council.

Evidence: The Supplier will provide evidence of such insurance upon request by the Council from time to time.

Maintenance: The Supplier undertakes to use all reasonable endeavours to maintain similar policies of insurance for six years after the date of the last Purchase Order.

LIABILITY AND INDEMNITY

Supplier Liability: The Supplier indemnifies and holds the Council harmless against any direct costs, losses, damages, expenses, liabilities or proceedings suffered or incurred at any time by the Council as a result of any breach of the Supplier's obligations or undertakings contained in this Agreement.

Council Liability: The Supplier agrees that the Council's liability in connection with this Agreement shall be limited to payment of the Fee payable in respect of the relevant Purchase Order.

Exclusion: Nothing expressed or implied in this Agreement will confer any liability on either party (**First Party**) in respect of any:

indirect, consequential or special loss, damage, cost or expense suffered or incurred by the other party as a direct or indirect result of a breach by the First Party of any of its obligations under this Agreement; or

loss, damage, cost or expense suffered or incurred by the other party, to the extent to which this results from any act or omission by that other party.

RECORDS

Purchase Order Records: The Supplier shall maintain complete and adequate records of each Purchase Order received under this Agreement and shall at all times supply such data and information as is necessary to keep the Council fully informed of the progress of Goods and/or Services to be provided under any Purchase Order.

Written Reports: The Supplier shall from time to time when requested by the Council deliver written reports and data to the Council and the Council shall at all times have complete access to all records and such other data as may be compiled relating to any Goods and/or Services delivered under this Agreement and all such data and records shall be delivered by the Supplier to the Council and shall belong exclusively to the council.

CONFIDENTIALITY

Confidential Information: The Council and the Supplier undertake to treat as confidential and not misuse or disclose to any third person or entity any information belonging to the other party that could reasonably be expected to be proprietary, commercially sensitive or confidential, or that is not yet publicly known, and which comes to their knowledge during the term of, or in connection with, this Agreement, except to the extent as may be necessary for the performance of this Agreement or as required by law.

Official Information: The Supplier acknowledges that the Council is subject to the Local Government Official Information and Meetings Act 1987 (LGOIMA) and that under that Act the Council may be requested to release certain official information about the Goods and/or Services held by the Council and/or the Supplier under this Agreement. In the context of LGOIMA, the parties consider that any information that would be likely unreasonably to prejudice the commercial position of either or both parties should be kept confidential on the basis that, amongst other things, it is commercially sensitive and may affect their other commercial dealings (both present and future).

INTELLECTUAL PROPERTY

Council Ownership: The Supplier acknowledges and agrees that any Intellectual Property made or discovered by the Supplier during the term of any Purchase Order under this Agreement shall forthwith be disclosed to the Council and shall belong to and be at the absolute disposal of the Council even after termination of this Agreement.

Supplier Obligations: The Supplier shall:

ensure, so far as is reasonably practicable, that no act is done that would or might breach the Council's rights under clause 0.

immediately notify the Council if it suspects or becomes aware of any infringement of the Council's rights under clause 0.

ASSIGNMENT AND SUB-CONTRACTING

No Assignment or Subcontracting: The Supplier shall not assign or subcontract any of its rights or obligations under this Agreement without the prior written consent of the Council, provided that such consent will not be unreasonably withheld.

Responsibility: The Supplier shall be responsible to the Council for the Services performed by any sub-contractor, and the sub-contracting of any of the Services will not relieve the Supplier from any liability or obligations under this Agreement.

CONFLICT OF INTEREST

Notice of Conflict: The Supplier will immediately disclose any potential conflict of interest to the Council which could or does arise in relation to the provision of the Services by the Council as a result of a present or future appointment, assignment, employment/engagement or any other interest of the Supplier.

TERMINATION

Termination by Notice: Despite any of the other terms and conditions of this Agreement, either party may at any time, without prejudice to any other rights and remedies it may have under this Agreement or otherwise at law, terminate this Agreement on giving 40 Business Days' written notice to the other party.

Insolvency Event: In the event that the Supplier becomes insolvent, is placed in receivership, has a winding up order issued against it or files a petition for proceeding in bankruptcy, this Agreement may be terminated immediately in writing by the Council.

Termination for Cause: Either party (**First Party**) may terminate this agreement at any time and with immediate effect by written notice to the other party (**Second Party**) if the Second Party:

has committed a material breach of this Agreement where that breach is reasonably capable of being remedied within 10 Business Days and where the Second Party has failed to comply with an earlier written notice given by the First Party;

specifying that breach; and

requiring that the Second Party remedy that breach within the period specified in the earlier notice;

has committed a material breach of this Agreement, where that breach is not reasonably capable of being remedied by the Second Party.

Payment: Subject to clause 0, where the Council terminates this Agreement under clause 16.1 and, as at the date of termination, the Supplier has carried out or performed work under a Purchase Order:

where the Purchase Order is for the supply of Goods, the Council will pay to the Supplier any actual out-of-pocket costs incurred by the Supplier as at the date of termination; or

where this Purchase Order is for the supply of Services, the Council will pay the Supplier the reasonable value of the work actually performed under the Purchase Order as at the date of termination, as agreed by the parties.

Limits on Payment: In any event, where the Council makes a payment to the Supplier pursuant to clause 0:

in no circumstances will that amount exceed the Purchase Order price; and

the Supplier will not be entitled to any further costs or damages howsoever arising.

DISPUTE RESOLUTION

Dispute Resolution Process: If any dispute or difference arises between the parties in relation to this Agreement, the parties will follow the dispute resolution process as set out in this clause.

Good Faith Obligation: The parties agree to act in good faith and use their best endeavours to cooperate with each other to promptly resolve any dispute or difference that may arise in relation to this Agreement.

Senior Management: If a dispute cannot be resolved in accordance with clause 0 either party may give written notice to the other at any time specifying the nature of the dispute (**Dispute Notice**) and requiring that the Supplier and the relevant general manager of the Council meet within 10

Business Days after delivery of the Dispute Notice, to attempt to resolve the Dispute (**Dispute Resolution Meeting**).

Mediation: If the parties fail to resolve the dispute at the Dispute Resolution Meeting, or if a party fails or refuses to attend the Dispute Resolution Meeting, either party may give written notice to the other specifying its intention to refer such dispute or difference to mediation. If a request to mediate is made then the party making the request will invite the chairperson for the time being of the New Zealand Chapter of LEADR to appoint a mediator to enable the parties to mediate and settle the dispute. All discussions in the mediation will be without prejudice and will not be referred to in any later proceedings. The parties will bear their own costs in the mediation and will equally share the mediator's costs. Nothing in this section applies to a dispute to which clause 0 (Confidentiality) applies.

NOTICES

Method of Delivery: Any written notice required under this agreement must be signed by a duly authorised senior representative of the party giving that notice and will be deemed validly given if:

delivered by hand to the intended recipient's address as set out below;

sent by facsimile to the intended recipient's facsimile number as set out below and if the sender's facsimile machine confirms transmission to the intended recipient; or

sent by email to the intended recipient's email address as set out below and if the recipient acknowledges receipt (whether by way of an automated message or otherwise).

Addresses: The addresses (including email address) and facsimile numbers to which notices are to be delivered or sent are as follows:

Notices to the Council: **For the Council:**

Contact: Accounts Payable
Phone Number: 06 759 6060
Fax Number: 06 759 6072
Email Address: accountspayable@npdc.govt.nz
Physical Address: Civic Centre, Liardet Street, New Plymouth

Notices to Supplier: **For the Supplier:**

All details are as per the New Supplier Request Form

Time of Delivery: Any notice transmitted by facsimile or email or delivered after 5.00 pm on a Business Day, or at any time on a non Business Day, will be deemed received at 9.00 am on the next Business Day (being, in each case, the time of day at the intended place of receipt of that notice).

GENERAL

Waiver: No waiver by either party of any provision of this Agreement shall be binding unless made by formal amendment to this Agreement. Further, any such waiver shall relate only to such matter, non-compliance or breach as it expressly relates to and shall not apply to any subsequent or other matter, non-compliance or breach.

Variation: This Agreement may not be varied except by agreement in writing signed by the authorised representative of each party.

Severability: Should any part or portion of this Agreement be held invalid, the remainder of the Agreement shall continue in force and effect as if the invalid provision had been deleted provided however that the parties to this Agreement may negotiate a valid and enforceable provision in replacement of the invalid provision.

Entire Agreement: Other than in relation to any separate supply agreement (as specified in clause 0), this Agreement constitutes the entire agreement between the Council and the Supplier and supersedes any previous or existing negotiations, letters, offers, representations or agreements, either written or oral, between the parties in relation to the supply of Goods and/or Services.

Governing Law: This Agreement shall be governed by the laws of the New Zealand and the parties submit to the Courts of that jurisdiction.