

PURCHASE ORDER TERMS and CONDITIONS

1. DEFINITIONS

Agreement means the Purchase Order and these terms and conditions and any Specifications and other documents referred to in the Purchase Order;

Business Day means a day (other than Saturday, Sunday or public holiday) on which registered banks are open for business in Invercargill;

Confidential Information means:

- (a) all information of a confidential nature (in whatever form) relating to the business, interests, methodology or affairs of the Purchaser and includes the commercial terms of the Agreement; and
- (b) other information unrelated to the Purchaser, this Agreement or the Services including information about third parties with whom the Purchaser deals which is treated by the Purchaser as confidential or which the Supplier ought to know is confidential;

Delivery means in the case of Goods, the delivery of the Goods in good order to the location specified in the Purchase Order, and in the case of Services, means the provision of the Services to the Purchaser's satisfaction at the Purchaser's premises or such other location specified in the Purchase Order;

Goods means the goods described in the Purchase Order;

GST means goods and services tax payable under the Goods and Services Tax Act 1985;

Purchaser means Invercargill City Council;

Services means the services described in the Purchase Order;

Social Media means accounts on Facebook, Twitter, LinkedIn, Instagram or any other social media platform held or used by the Supplier whether for business or personal use;

Specifications means any technical or other specification relating to the Goods or Services attached to or referred to in the Purchase Order; and

Supplier means the person or entity as named in the Purchase Order who sells the Goods or Services to the Purchaser and its successors and permitted assigns.

2. ENTIRE AGREEMENT

2.1 This Agreement evidences the entire agreement between the Supplier and Purchaser in connection with the Goods or Services and supersedes and extinguishes all prior agreements (including any quotes or terms provided by the Supplier) between the Supplier and Purchaser relating to such matters.

2.2 Unless otherwise stated, in the event of inconsistency, the order of precedence of the documents comprising the Agreement shall be as follows:

- (a) the Purchase Order;
- (b) these terms and conditions;
- (c) the Specifications; and

(d) any other document attached to or referred to in the Purchase Order.

2.3 The Supplier cannot impose different terms and conditions on future purchases by changing their terms and conditions on packing slips, delivery dockets, invoices, updating their internet site or forwarding email notices to the Purchaser. All changes must be agreed in writing by the Purchaser in accordance with the Purchaser's delegations register and Procurement Policy.

3. PRICE

3.1 The price of the Goods or Services will be as set out in the Purchase Order and includes all costs and expenses incurred by the Supplier in relation to provision of the Goods or Services. The Purchaser will not be bound to pay for the Goods or Services unless the Purchaser has agreed to the price in writing before the Goods or Services are supplied. The price set out in the Purchase Order or agreed between the Supplier and the Purchaser for the Agreement may not be amended without the prior written agreement of the Purchaser.

4. PAYMENT

4.1 The Supplier will provide the Purchaser with a valid tax invoice setting out the amount payable by the Purchaser to the Supplier for the Goods or Services altogether with GST.

4.2 All invoices will require the Purchase Order number to be quoted on the invoice. Any invoices received without the Purchase Order number will not be processed for payment and will be returned to the Supplier for resolution.

4.3 Electronic copies of invoices are encouraged and can be emailed to APInvoices@icc.govt.nz.

4.4 Unless there is a bona fide dispute in relation to the invoice, the Purchaser will pay the invoice of the Supplier on the 20th of the month following the date of invoice. Payment will be made by direct credit to the bank account nominated by the Supplier.

5. OWNERSHIP, RISK & DELIVERY

5.1 Unless otherwise agreed in writing, the Supplier will deliver the Goods to the location specified in the Purchase Order by the date specified in the Purchase Order. Where no location is specified, the Supplier shall be responsible for contacting the Purchaser to obtain delivery instructions.

5.2 Any risk associated in the Goods remains with the Supplier until Delivery of the Goods to the Purchaser in accordance with this Agreement. Title in the Goods passes to the Purchaser upon Delivery of the Goods to the Purchaser.

5.3 Unless otherwise agreed in writing, the Supplier shall be responsible for the cost of and arranging Delivery (including all packaging, transportation, insurance and handling costs).

PURCHASE ORDER TERMS and CONDITIONS

5.4 Goods may not be delivered in part unless otherwise agreed in writing by the Purchaser.

6. REJECTION

6.1 The Purchaser may reject any Goods which it reasonably considers are defective in any way or where the warranties in clause 7.1 have not been complied or where no Purchase Order exists or an invalid Purchase order is used by the Supplier within 20 Business Days of receipt of such Goods by notifying the Supplier of its intention to reject the Goods. Any costs incurred by the Purchaser in rejecting any Goods will be at the Supplier's sole cost.

6.2 All Goods rejected pursuant to clause 6.1 must be removed from the Purchaser's premises by the Supplier within 2 Business Days of Purchaser notifying the Supplier of its intention to reject the Goods and the location from which the Supplier shall collect the rejected Goods.

7. WARRANTIES

7.1 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 Agreement will:

- (a) be new and unused on Delivery;
- (b) conform as to design, quality, quantity, configuration, functionality, the samples (if any) and Specifications provided to the Purchaser by the Supplier;
- (c) 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;
- (d) where applicable, be properly installed and integrated into, and will be compatible with and will not damage, the Purchaser's systems and other property;
- (e) be free from any security interest as defined in the Personal Property Securities Act 1999; and
- (f) 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:
 - (i) be fit for the expected use and purpose; and
 - (ii) be free from any defect in design, materials, workmanship or title; and
- (g) will not infringe any third party's intellectual property rights.

7.2 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. This clause survives completion and/or termination of the Agreement.

7.3 The Supplier will promptly remedy any breach of the warranties set out in clause 7.1 and 7.2 to the Purchaser's satisfaction. If requested by the Purchaser, the Supplier will replace, repair or upgrade any faulty Goods and re-perform 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 Purchaser. The warranty period set out in clause 7.1(f) 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.

7.4 The Supplier will, to the greatest extent possible, pass onto the Purchaser the benefit of any warranty or other assurance from any other person in respect of the Goods or Services supplied to the intent that the Purchaser may have recourse against those persons through the Supplier.

8. LIABILITY AND INDEMNITY

8.1 The Supplier acknowledges that to the maximum extent permitted by law:

- (a) the Supplier indemnifies the Purchaser against any liability, loss or damage or costs suffered or incurred by the Purchaser arising directly or indirectly out of or in connection with the provision of the Goods or Services by the Supplier.
- (b) the Purchaser will not be responsible or 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 or Services; and
- (c) in the event that notwithstanding clause 8.1(b) above the Purchaser is found to be liable to the Supplier under or in connection with this Agreement, the Purchaser's liability shall be limited to the purchase price of the relevant Goods or Services.

8.2 Clause 8.1 survives completion and/or termination of the Agreement.

9. CONFIDENTIALITY

9.1 The Supplier must not disclose any Confidential Information related to the Purchaser, the Agreement or the Goods or Services except to the extent that the disclosure of that information is necessary for the Supplier to carry out its obligations under this Agreement, to enforce any of its rights under it or where disclosure is required by law. This clause survives completion and/or termination of the Agreement.

PURCHASE ORDER TERMS and CONDITIONS

9.2 The Supplier, the supplier's staff and contractors must not advertise, issue any statements including press releases to the media, or publish any materials including photos and videos concerning this Agreement, the Services or the Purchaser, including using Social Media, without obtaining the prior written consent from the Purchaser.

10 TERMINATION

10.1 The Purchaser may, at any time, terminate the Agreement, in whole or in part, without cause upon written notice to the Supplier. Following any such notice, the Supplier must, to the extent specified by the Purchaser, stop all work under the Agreement. Any costs for any such termination of the Agreement will be limited to actual non-recoverable costs incurred by the Supplier which the Supplier can demonstrate were properly incurred prior to the date of termination. In no event shall such reimbursement include anticipated profits for undelivered Goods or Services. Without limiting the foregoing, the Purchaser may terminate the Agreement, in whole or in part, if the Supplier:

- (a) fails to make Delivery of the Goods or Services within the time specified in the Purchase Order;
- (b) fails to replace or remedy defective Goods or Services in accordance with this Agreement;
- (c) fails to comply with any other terms specified in the Agreement; or
- (d) becomes insolvent, files or has filed against it a petition in bankruptcy, or makes an assignment for the benefit of creditors.

10.2 Termination of this Agreement will be without prejudice to the rights of a party against the other party accrued prior to such termination.

11 FORCE MAJEURE

11.1 Neither the Purchaser nor the Supplier shall be liable to the other for default or delay in performing its obligations in respect of this Agreement 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 (5) Business 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 Agreement 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 thirty (30) days after the Delivery date specified in the Purchase Order, the Purchaser

may, without penalty and compensation to the Supplier, terminate the Agreement.

12 GENERAL TERMS

12.1 **Compliance with laws:** The Supplier must comply with all laws and standards applicable to the supply of Goods and/or the Services.

12.2 **Health and Safety:** The Supplier will be responsible for the Supplier's employees' own health and safety. The Supplier must comply with the Health and Safety at Work Act 2015 (and any successor or replacement legislation) and any Regulations made under that Act and all health and safety requirements of the Purchaser which may be relevant to the Supplier's Delivery of the Goods or Services under this Agreement.

12.3 **Purchaser's Requirements:** The Supplier will comply with the Purchaser's Requirements for Contractors as issued from time to time to the extent they apply to the Goods and Services being supplied and do not conflict with these provisions.

12.4 **Assignment:** The Supplier shall not assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the Purchaser.

12.5 **Disputes:** The Purchaser and the Supplier shall attempt to quickly and amicably settle any disputes or differences that may arise. In the event that any such disputes or difference cannot be negotiated and amicably resolved between the parties within fifteen (15) Business Days after the dispute was first raised, then either party may refer it for final determination by the courts. In the event of and during any unresolved dispute the Supplier must ensure the continued progress of performing its obligations under the Agreement.

12.6 **No waiver:** Neither party shall be considered to have waived or released any of its rights under this Agreement unless agreed in writing.

12.7 **Severability:** 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.

12.8 **Notices:** Any notice to be given under the Agreement 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 Purchase Order.

12.9 **Law and jurisdiction:** This Agreement shall be governed by New Zealand law, and the New Zealand courts have non-exclusive jurisdiction in respect of this Agreement.

12.10 **Due Diligence:** The Supplier agrees that the Purchaser can undertake NZBN, Company Registration, GST and Credit checks.

12.11 **No Guarantees** will be given or implied by the Supplier of the Purchaser's employees or Councillors.