

Western Bay of Plenty District Council Purchase Order Terms and Conditions

These Terms and Conditions apply to all Purchase Orders issued by Council on or after 1 September 2018, until further notice. Council reserves the right to change these Terms and Conditions at any time, with such changes becoming effective from the date of uploading onto Council's website.

1. FORMATION OF CONTRACT

- 1.1 Subject to clause 1.3, a contract for the supply of Goods and/or Services (**Contract**) will arise on your acceptance of any valid Purchase Order issued by Council (whether by your written acknowledgement or by Delivery) and will include the terms of the relevant Purchase Order and these Terms and Conditions. In the event of any inconsistency between the terms of the relevant Purchase Order and these Terms and Conditions, the terms of the relevant Purchase Order will prevail.
- 1.2 Subject to clause 1.3, the terms of the relevant Purchase Order together with these Terms and Conditions comprise the entire Contract between us in relation to the supply of the Goods and/or Services supplied and supersede any previous discussions, arrangements and representations. Any terms and/or conditions asserted or provided by you in connection with the supply of such Goods and/or Services (for example, your terms of trade) will not apply to nor bind Council.
- 1.3 In the event that we have both signed a written agreement for the supply of Goods and/or Services, then the specific terms of that agreement will apply and not these Terms and Conditions.
- 1.4 Purchase Orders may be placed by any department of Council. In all cases, Council is the principal contracting party and is solely responsible for the obligations arising under the Contract.
- 1.5 If the Purchase Order is not accepted by your written acknowledgement or Delivery within the period specified in the Purchase Order or if not specified, within a reasonable period given the nature of the Goods and/or Services supplied, Council may cancel the relevant Purchase Order by written notice to you.
- 1.6 Council will use reasonable endeavours to ensure that any estimates of volumes or specifications given to you will be accurate but you should not rely on this. You must satisfy yourself as to the accuracy of any forecasts or specifications prior to pricing and accepting the Purchase Order. Council will rely on your expertise to advise or alert us about any matters associated with what looks like an incorrect or incomplete specification prior to supply.

2. TERMS OF PAYMENT

- 2.1 You must supply the Goods and/or Services at the prices set out in the relevant Purchase Order (or as otherwise agreed in writing).
- 2.2 You agree that the unit prices set out in the Purchase Order (or otherwise agreed in writing), will be the full cost payable by Council.
- 2.3 You must on Delivery of any Goods or Services:
 - (a) send a detailed advice note (or packing slip) describing the Goods or Services to each Delivery point; and

- (b) ensure that all packing slips, advice notes and correspondence concerning the Contract include the Purchase Order Number and any other information that Council may reasonably request.
- 2.4 You must submit a valid GST tax invoice to Council for payment for the Goods and/or Services following their Delivery.
- 2.5 Your invoice must:
 - (a) Be legible and preferably, typewritten (electronic or typed);
 - (b) be sent by email to accounts@westernbay.govt.nz, and cc'd to the Council representative responsible for issuing the Purchase Order. If an invoice is not sent to the right addresses, it will not be considered to have been delivered for the purposes of clause 2.3 until it has been received by the correct people responsible for processing it;
 - (c) include your GST number and any other information required to comply with any relevant standards provided by the Inland Revenue Department (if applicable) for a valid tax / GST invoice;
 - (d) quote the purchase order number;
 - (e) include the right quantity, price and description of the Goods and/or Services supplied and the relevant dates of Delivery;
 - (f) show the total payable by Council, with an appropriate breakdown in sufficient detail to show how this amount has been derived; and
 - (g) be received within 60 Working Days from the date that the Goods and/or Services were Delivered.
- 2.6 You accept that your invoice may be returned to you or payment may be delayed if Council's invoicing and payment process requirements are not correctly followed.
- 2.7 Subject to compliance with the Contract and there not being errors or discrepancies, your invoice will be paid by Council on the 20th day of the month following the date of the invoice, provided the invoice has been received by Council no later than the 5th day of the month.

Example: For Goods and/or Services Delivered in January:

- An invoice dated 31st January and received by 5 February will be paid on 20 February;
 - An invoice dated 31st January and delivered after 5 February will be paid on 20 March.
- 2.8 If any part of an invoice or the Delivery of Goods and/or Services is disputed by Council, Council may withhold payment of the relevant invoice or part thereof until such time as the dispute is resolved.
 - 2.9 In making payment for Goods and/or Services which have been Delivered, Council may withhold, deduct or set off any amount that was previously overpaid or any amount

recoverable by Council from you under the Contract or otherwise.

- 2.10 You must notify Council in writing of any changes in your business address, bank account details or GST details. Any notification of a change must be sent to Council in writing.

3. PACKING AND DELIVERY

- 3.1 You must have a valid Purchase Order Number issued to you before supplying any Goods and/or Services.
- 3.2 Goods and/or Services supplied against an invalid Purchase Order (or without advice notes or packing slips marked with the valid Purchase Order Number) may be returned by Council at your expense including the cost of packing, transporting, insuring and handling the rejected Goods and/or Services.
- 3.3 You must adequately pack and protect all Goods against damage or deterioration at your expense. Where practicable (but without compromising your obligations under this clause), all Goods should be packaged in recyclable packaging.
- 3.4 You must Deliver the Goods and/or Services not later than the time/s specified in the Purchase Order or, if no time is specified in the Purchase Order, within a reasonable time of the date of acceptance of the Purchase Order. Time will be of the essence.
- 3.5 If an emergency or disaster occurs, you shall use your best endeavours to provide earlier Delivery or to delay Delivery if reasonably requested by Council.

4. PASSING OF TITLE AND RISK

- 4.1 Subject to Council's rights under clause 3, risk and title to the Goods and/or Services will pass to Council on its acceptance of them in accordance with clause 4.2.
- 4.2 Council is deemed to accept Goods and/or Services supplied to it when it begins using them or after notifying you of its acceptance or if it has taken Delivery without indicating any conditions to such acceptance. Acceptance by Council does not mean it acknowledges that the Goods and/or Services meet the warranty requirements of clause 5, even if such acceptance follows acceptance testing. If Council wishes to test or inspect any Goods and/or Services before accepting Delivery, you must provide any assistance with that testing or inspection which is reasonably requested by the Council.
- 4.3 Council has no obligation to accept any Goods and/or Services which it believes, on reasonable grounds, do not meet the requirements of the Contract including, without limitation, the warranties set out in clause 5.
- 4.4 You must not register a security interest in any Goods Delivered under the Contract or pursuant to your terms of trade (unless expressly agreed by Council in writing).

5. WARRANTIES AND UNDERTAKINGS

- 5.1 You undertake and warrant that all Goods supplied by you:
- are new and unused (unless otherwise agreed by Council);
 - are of merchantable quality, and free of any defects in materials and workmanship;

- are fit for any purpose which they could reasonably be expected to be used for, including any purpose which Council told you it intended to use them for at or prior to the time it issued the Purchase Order;
- comply with any requirements and specifications which Council provided to you at or before the time it issued the relevant Purchase Order or as otherwise agreed with you;
- are ethically sourced and, the extent relevant to the type of Goods supplied, grown and manufactured from sustainable processes and products;
- comply with all applicable legislative and regulatory requirements, and all applicable industry standards;
- match any descriptions of them published by or on behalf of the manufacturer or the supplier; and
- are able to be lawfully sold by you to Council and that Council will, on acceptance, receive good title to them, free from any security interest, lien or other encumbrance.

5.2 You undertake and warrant that all Services performed by you will be carried out:

- with all reasonable care, skill and diligence;
- at the time specified in the relevant Purchase Order, or if no time is specified, will be carried out promptly;
- by the appropriate number of people with an appropriate level of experience, qualification and supervision; and
- in accordance with all applicable legislative and regulatory requirements, and all applicable industry codes of conduct.

5.3 The warranties and undertakings in this clause 5 are not intended to limit any other legal obligations which you may have to Council. These warranties and undertakings are in addition to all other warranties, guarantees or other terms expressed or implied by law or otherwise.

6. DEFAULT AND CANCELLATION

6.1 If you breach any term of the Contract then, at the sole option of Council, and without prejudice to any other remedy or right, Council may:

- If the Contract relates to Goods, either:
 - reject the Goods in whole or in part and return the Goods to you at your risk and expense including the cost of packing, transporting, insuring and handling the rejected Goods and you must immediately reimburse Council for any monies paid in respect of the returned Goods; or
 - require you to replace, repair, reinstate or re-supply the Goods at your expense so that they conform to the Contract or may have the Goods replaced, repaired or re-supplied by another supplier and recover the cost of doing so from you;
- If the Contract relates to Services, require you to perform the Services again to the required standard at your expense or we may, after the issue of a final notice following consultation and an opportunity to resolve issues, engage another person to perform the Services and recover the cost of doing so from you; and/or
- Suspend payment for the Goods and/or Services until the breach has been remedied to Council's reasonable

satisfaction. Council shall not be responsible for any financial consequences suffered by you for suspension of the Contract.

- 6.2 Council may terminate the Contract or cancel any Purchase Order upon notice effective immediately if you breach any provision of the Contract and/or the Purchase Order and fail to remedy the breach within 10 Working Days of Council giving written notice to you specifying the breach and requiring it to be remedied. Breach of either clauses 5 or 12 by you will be deemed as a breach of the Contract whether or not Council elects to accept the Goods and/or Services in question.
- 6.3 Council may, by written notice to you, terminate the Contract or cancel any Purchase Order upon notice effective immediately if you become bankrupt, cease to carry on business, go into liquidation, become insolvent, appoint a receiver or enter into a formal proposal for a compromise with your creditors under the Companies Act 1993.
- 6.4 In the event that Council terminates the Contract, any outstanding or unperformed Purchase Orders at the end of the period of notice will be deemed cancelled.
- 6.5 Subject to Council's rights of deduction or set-off, Council will pay you for any Goods and/or Services validly Delivered up to the date of termination.
- 6.6 No failure or delay on the part of Council to exercise any of its rights in respect of any default by you will prejudice Council's rights in connection with that default or any subsequent default.
- 6.7 Termination of the Contract and/or cancellation of a Purchase Order does not affect any responsibilities which are intended to continue or come into effect after the Contract terminates.

7. INDEMNITY

- 7.1 You shall at all times indemnify Council in respect of any loss, damage or expense suffered or incurred by Council (including legal fees on a solicitor and own client basis) as a direct or indirect consequence of any:
- (a) act, error or omission by you and for which you are legally liable; or
 - (b) breach by you of any warranty or other obligation in the Contract.
- 7.2 You must keep full records and documentation in relation to the performance of the Contract for 7 years and provide copies of such records to Council upon its reasonable request.
- 7.3 This clause 7 shall survive termination or expiry of the Contract.

8. RELATIONSHIP BETWEEN PARTIES

- 8.1 Nothing in the Contract should be interpreted as constituting either of us as an agent, partner or employee of the other and neither of us will have the authority to act for or to incur any obligation on behalf of the other except as expressly provided for in the Contract.
- 8.2 Council's relationship with you is not exclusive.
- 8.3 You acknowledge that where Council acquires Goods and/or Services from you as a "consumer" (as that term is defined in the Consumer Guarantees Act 1993), then that Act applies to the acquisition of the Goods and/or Services.
- 8.4 Council may carry out an audit of your performance under the Contract at any time and you agree to co-operate fully with Council, including by attending all relevant meetings and

providing in a timely manner all requested records and information.

9. CONFIDENTIALITY

- 9.1 All Confidential Information will be and remain the property of Council, and you must:
- (a) keep all Confidential Information confidential and use the Confidential Information only for the purpose of the Contract;
 - (b) not disclose any Confidential Information to any person without the prior written consent of Council (unless the disclosure is required under law); and
 - (c) destroy or return the Confidential Information to Council upon Council's request at any time, provided that you may disclose Confidential Information to your employees, subcontractors and advisers to the extent necessary for the purposes of the Contract. You must ensure that your employees, subcontractors and advisers will comply with these obligations of confidentiality.
- 9.2 Upon written request, you will provide Council with copies of any records on your file or within your possession or control, where receipt of such records may be reasonably required by Council.
- 9.3 You acknowledge that Council's obligations under this clause are subject to its legal obligations of disclosure as a public body.
- 9.4 This clause 9 shall survive termination or expiry of the Contract.

10. HEALTH AND SAFETY PROTOCOLS

- 10.1 Where Services are being provided, you must at all times:
- (a) comply with all health and safety legislation, regulations, applicable codes of practice and standards, Council's health and safety policies and procedures, and any standard operating procedures;
 - (b) ensure that you take all practicable steps to ensure the health and safety of your personnel, and those of other parties associated with supply of the Services, including Council workers, subcontractors, service providers, the public and visitors to any area under your control;
 - (c) have, and keep current, all relevant health and safety qualifications required to perform your obligations under the Contract;
 - (d) immediately provide Council with relevant information about any health and safety issues relating to the supply of the Services; and
 - (e) comply with all reasonable directions given by Council in relation to health and safety issues in connection with the Contract.
- 10.2 You must:
- (a) so far as is reasonably practicable, consult, co-operate with and co-ordinate your activities with Council in relation to the supply of the Services;
 - (b) facilitate engagement with Council (and/or your designees) in relation to health and safety issues; and
 - (c) ensure that any feedback, agreed changes or improvements to health and safety processes and procedures are implemented immediately.

- 10.3 If you are providing the Services at a Council owned or controlled site, then you must:
- (a) participate in Council's emergency procedures, workplace assessments, training or induction programmes and any other relevant health and safety activities (if requested);
 - (b) participate in Council's worker participation practices (if requested); and
 - (c) identify and address any special needs requirements.
- 10.4 Council (or its representatives) may carry out an audit of your activities to ensure compliance with all obligations set out under this clause 10. You must:
- (a) actively cooperate and participate in any health and safety audits carried out by Council;
 - (b) provide all necessary access and information required by Council in relation to the audit and any other health and safety monitoring; and
 - (c) take all reasonable steps to immediately rectify any issues raised by Council.
- 10.5 You must immediately notify Council of any: (i) "notifiable event" (as defined in the Health and Safety at Work Act 2015); (ii) near miss or exposure you become aware of in the course of performing the Services, (iii) WorkSafe inspection, investigation or information request in connection with your performance of the Services; and/or (iv) breach of this clause 10 and provide Council with such assistance and information as Council requires in relation to any of these matters.
- 10.6 You shall, prior to commencing the Services, undertake a site specific risk assessment and prepare and submit to Council a site specific safety plan for the performance of the Services.
- 10.7 This clause also applies to your subcontractors, including the reporting, notification and compliance obligations. You shall ensure that your subcontractors are aware of and comply with these obligations.
- 10.8 This clause 10 shall survive termination or expiry of the Contract.
- 11. INTELLECTUAL PROPERTY**
- 11.1 All Intellectual Property owned by either of us and existing prior to the commencement of the supply of Goods and /or Services will remain the exclusive property of that party who owns it.
 - 11.2 You agree that all new Intellectual Property that arises or is created by you or any of your employees, subcontractors or agents in the course of the Contract will become Council's exclusive property.
 - 11.3 You grant to Council a perpetual, royalty free, non-exclusive licence to use all Intellectual Property owned by you under clause 11.1.
- 12. ASSIGNMENT AND SUBCONTRACTING**
- 12.1 You may not assign, subcontract or otherwise transfer any of your rights, benefits or obligations under the Contract without the prior written consent of Council. A change in the management or control of your business or the sale of a major part of your business or assets will be deemed to be an assignment for the purposes of this clause.
 - 12.2 Where Council consents to you assigning, subcontracting or transferring your obligations under, or aspect of, the Contract to a third party, you will remain fully responsible for all obligations to Council under the Contract.
- 13. INSURANCE**
- 13.1 While supplying any Goods and/or Services to Council, you must maintain at your cost public liability insurance for a minimum value of \$2,000,000 with no capped limits (unless otherwise agreed in writing).
 - 13.2 While supplying any professional Services, you must maintain at your cost professional indemnity insurance for a minimum value of \$1,000,000 with no capped limits (unless otherwise agreed in writing).
 - 13.3 While undertaking any construction work on Council property, you are to maintain at the your cost, at least the following insurances
 - (a) contractors all risks insurance for a minimum value of the construction contract price plus professional fees, escalation costs and demolition (if appropriate);
 - (b) Motor vehicle third party liability to a minimum value of \$1,000,000 (unless otherwise agreed in writing).
 - 13.4 You must have your insurer complete Council's standard insurance certificates for the specified insurances if required by Council and ensure that the benefit of such insurances are available to Council for any loss, damage, expense or third party claim.
 - 13.5 You shall diligently pursue any insurance claims for the full amount of Council's loss or damage (if any).
- 14. THIRD PARTY WARRANTIES**
- 14.1 You will, to the greatest extent possible, pass on to Council the benefit of any warranty or guarantee received from any other person in respect of Goods and/or Services supplied, so that Council may have recourse against those persons.
- 15. PUBLICITY**
- 15.1 You must not represent or publicise in any way to anyone that you are a supplier to the Council, or allow media releases or advertising that suggests the same, without the Council's prior written consent.
- 16. CLAIMS AGAINST COUNCIL**
- 16.1 In no event will Council be liable for any indirect or consequential loss, damage or expense including any loss of profit suffered by you in relation to the Contract.
 - 16.2 Any claim against Council must be made in writing and received within 60 Working Days of the event to which it relates, and no claim shall exceed the value of the Goods and/or Services provided under the relevant Purchase Order.
- 17. ENVIRONMENTAL**
- 17.1 In the performance of the Services, you will not permit any unauthorised activity or nuisance to occur, contaminant to be discharged upon, or the making of excessive noise to occur at, any relevant property owned or controlled by Council.
 - 17.2 In the supply of Goods and/or Services, you will endeavour to implement environmentally sound business practices and provide leadership in environmental sustainability which conserves resources, conserves energy, and promotes waste and pollution reduction.

18. **NOTICES**

- 18.1 Any notice to be given under the Contract must be in writing, must be delivered or sent by post or by e-mail, if to:
- (a) Council, to the relevant address(es) on the Purchase Order, or
 - (b) you, to your registered office, or if you have no registered office, your usual business address.
- 18.2 A notice will be deemed to have been received:
- (a) if delivered by hand, when it is left at the relevant address during normal business hours;
 - (b) if sent by post, 4 Working Days after it has been posted; or
 - (c) if sent by email, at the time set out on the relevant confirmation report evidencing an error-free transmission to the correct email address.

19. **REGULATORY CAPACITY**

- 19.1 To the extent that Council has regulatory authority or powers (**Regulatory Capacity**), this Contract does not bind or fetter Council in any such Regulatory Capacity.
- 19.2 You will not be entitled to any damages or other payment should Council, acting in its Regulatory Capacity, either decline any consent or permission, issue any consent or permission on terms that are unsatisfactory to any person or for any act or omission by Council acting in its Regulatory Capacity.

20. **INTERPRETATION**

In these Terms and Conditions, unless the context otherwise requires:

Council means the Western Bay of Plenty District Council.

Confidential Information includes the terms of the Contract (including the details of any Purchase Order), information highlighted by Council to you as being confidential and information that would reasonably be considered to be confidential, except information that is public knowledge.

Working Day means a day on which registered banks are open for business in Tauranga, excluding Saturdays and Sundays.

Delivery means the delivery of Goods to, and/or the supply of Services at or from, the location nominated by Council in the Purchase Order or otherwise specified in writing, and Deliver has a corresponding meaning.

Goods means the goods, materials or substances specified in the Purchase Order and all parts or components of the same.

GST means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

Intellectual Property means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and, without limitation, includes inventions, discoveries and novel designs, whether or not registered or registerable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright may subsist now or in the future; confidential information, trade secrets and trademarks, including

service marks and trading names (whether registered or unregistered).

Purchase Order means an official Council purchase order for Goods and/or Services issued to you from time to time containing a reference to these Terms and Conditions.

Purchase Order Number means the number set out on the Purchase Order as relating to that particular purchase of Goods and/or Services.

Services means the services specified in the Purchase Order to be provided or performed by you.

Terms and Conditions means these Terms of Conditions as amended or replaced from time to time and uploaded for disclosure purposes on Council's website.

you or your means the person, firm, company or corporate entity to whom Council issues a Purchase Order and/or with whom Council enters into a Contract for the supply of Goods and/or Services.