

## **Contract Conditions – Purchase Order Conditions for the Provision of Services**

# Purchase Order Conditions for the Provision of Services

## 1 Introductory Issues - Definitions

In this Contract, the following terms have the meanings indicated, unless inconsistent with the context:

**"Code of Practice"** means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014 (Vic)*.

**"Commencement Date"** means the date specified as such in the Specification or as agreed between Council and the Contractor.

**"Confidential Information"** means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Council including any information designated by the Council as confidential, which is disclosed, made available, communicated or delivered to the Contractor, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Contract;
- (b) which the Contractor can demonstrate was in its possession prior to the date of the Agreement;
- (c) which the Contractor can demonstrate was independently developed by the Contractor; or
- (d) which is lawfully obtained by the Contractor from another person entitled to disclose such information.

**"Contract"** means the contract evidenced by the Contract Documents.

**"Contractor"** means the party specified as the supplier in this Purchase Order.

**"Contract Documents"** means the Specification, the Contractor's Quotation and these Purchase Order Conditions for the Provision of Services.

**"Contractor's Quotation"** means the Contractor's response in writing to Council's Specification which must include a Purchase Price.

**"Contractor's Representative"** means the person nominated in writing by the Contractor from time to time.

**"Council"** means Bayside City Council A.B.N. 65 486 719 651.

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**"Information Privacy Principles"** means the Information Privacy Principles under the *Privacy and Data Protection Act 2014 (Vic)*.

**"Intellectual Property Rights"** includes all present and future copyright and neighbouring rights, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**"Laws"** means the law in force in the State of Victoria and the Commonwealth of Australia, including common law and legislation.

**"Overdue Amount"** means an amount (or part thereof) that:

- (a) is not, or is no longer, disputed;
- (b) is due and owing under a tax invoice properly rendered by the Contractor in accordance with this Contract; and

which has been outstanding for more than 30 days from the date of receipt of the invoice (or the date that the amount ceased to be disputed, as the case may be).

**"Services"** means:

- (a) the performance of work;
- (b) the supply of materials; and
- (c) all other things required to be done -

under this Contract by the Contractor, as indicated in the Contract Documents and includes any matters reasonably to be inferred from the Contract Documents.

**"Specification"** means Council's requirements specified in writing outlining the required Services.

**"Term"** means the term of this Contract commencing on the Commencement Date and expiring on the date specified as the date of expiry in the Specification.

## 2. This Contract prevails

By submitting a quotation (the Contractor's Quotation) the Contractor agrees that this Contract prevails over any claimed contrary conditions submitted by the Contractor in connection with the Contractor's Quotation or at any other time unless such contrary conditions have been accepted by the Council as evidenced by an authorised signature on the contrary conditions.

## 3. Provision of Services

- (a) The Contractor must provide the Services to the Council in accordance with this Contract.
- (b) The Contractor must provide any and all equipment (including computer hardware and software and any ancillary support) necessary for the performance of the Services.

## 4. Invoicing and Payment

- (a) The Contractor must submit to the Council a tax invoice following the provision of Services which contains the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as the Council may reasonably require. The tax invoice must be sent to the address specified in this Purchase Order.
- (b) The Council will pay the invoiced amount within 30 days of receipt of an accurate invoice. However, if the Council disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Contractor of the amount in dispute. The parties will endeavour to resolve any such dispute.
- (c) Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with this Contract but must be taken only as payment on account.
- (d) The Council will, on demand by the Contractor, pay simple interest on a daily basis on any Overdue Amount, at the rate for the time being fixed under the *Penalty Interest Rates Act 1983 (Vic)*. This clause does not apply to any disputed amounts withheld by the Council under clause 3 (b).

## 5. Warranties

The Contractor warrants to the Council that:

- (a) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
- (b) the Contractor has the accreditation or membership of professional or other bodies in relation to the provision of the Services and that it will use its best endeavours to maintain such accreditation or membership during this Contract;
- (c) it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with this Contract;
- (d) where the Council has, either expressly or by implication, made known to the Contractor any particular purpose for which the Services are required, the Services will be performed by the Contractor in such a way as to achieve that result;
- (e) it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services; and
- (f) it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Contract.

## 6. Liability

The Contractor must indemnify the Council and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense on an solicitor-client basis) which any of them suffers as a direct result of any failure to provide the Services in accordance with this Contract or any other breach of this Contract.

## 7. Intellectual Property Rights

The Contractor grants to the Council a non-exclusive, perpetual, royalty-free licence to use any Intellectual Property Rights in relation to any Services supplied to the extent necessary to allow the Council the full use and enjoyment of those Services and the Contractor must, upon request by the Council, do all things as may be necessary (including executing any documents) to give full effect to such rights.

## 8. Default by Contractor

- (a) If the Contractor defaults in the performance or observance of any obligation it has under this Contract, the Council may give notice to the Contractor specifying the default and requiring that such default be remedied within 14 days.
- (b) If, within 14 days after receipt of the notice, the Contractor fails to remedy the default, to the satisfaction of the Council, the Council (without prejudice to any other rights that it may have under this Contract or at common law against the Contractor) may:
- (i) suspend payment under this Contract; or
  - (ii) terminate this Contract and any other Contract between the parties.

## 9. Insolvency of the Contractor

If the Contractor -

- (a) being a person, commits any act of bankruptcy; or
- (b) being a company, commits any act of insolvency -

then the Council may terminate this Contract immediately.

## 10. Termination for convenience

The Council may, at any time, by giving written notice to the Contractor, terminate this Contract and the Contractor must on receipt of such notice immediately cease all work in connection with the provision of the Services and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event the Council will pay the reasonable fees and expenses of the Contractor in accordance with this Contract but not any loss of prospective profits. In no circumstances must the fees or expenses payable exceed the fees or expenses that would have been paid had this Contract been completed.

## 11. Variation to the specified Services

The Council may at any time give written notice to the Contractor proposing a variation to the specified Services. The Contractor must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied price that will apply for the provision of the varied Services. The Council may accept the varied price proposal within 7 days of receipt from the Contractor but in the absence of such acceptance this Contract will continue as if no proposal under this clause had been made.

## 12. No Relationship

Nothing in this Contract will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Contract will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

## 13. Insurance

- (a) The Contractor must obtain and maintain insurance cover at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Contractor is liable in connection with the provision of the Services including, if applicable, public liability insurance (minimum \$20 million per occurrence) and professional indemnity insurance (minimum \$10 million per occurrence).
- (b) On request, the Contractor must provide the Council with evidence of the currency of any insurance it is required to obtain.

## 14. Confidentiality and Privacy

- (a) The Contractor and its employees, agents, directors, partners, shareholders and consultants must not disclose or otherwise make available any Confidential Information to any other person.

- (b) The Contractor consents to the Council publishing or otherwise making available information in relation to the Contractor (and the provision of the Services) as may be required:

- (i) to comply with the Local Government Act;
- (ii) by the Auditor-General; or
- (iii) to comply with the *Freedom of Information Act 1982 (Vic)*.

- (c) The Contractor acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done in connection with the provision of the Services in the same way as the Council would have been bound had the relevant act been done or engaged in by the Council.

## 15. Access

When entering the premises of the Council, the Contractor must ensure that its employees, agents and sub-contractors use reasonable endeavours to protect people and property, prevent nuisance and act in a safe and lawful manner and comply with the safety standards and policies of the Council (as notified to the Contractor).

## 16. Sub-contracting

- (a) The Contractor must not sub-contract to any third person any of its obligations in relation to the provision of the Services without the prior written consent of the Council (which may be given or withheld in its absolute discretion).
- (b) The Contractor will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Contract and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Contractor itself.

## 17. Compliance with Law

The Contractor must, in the provision of the Services, comply with all Laws and with the lawful requirements or policy of any governmental agency applicable to the provision of the Services by the Contractor.

## 18. GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Contract are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.

## 19. General

- (a) This Contract is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the provision of the Services.