

TERMS AND CONDITIONS OF PURCHASE

1. Definitions

The following terms will, if not inconsistent with the context, have the meanings indicated:

Goods means the goods described in this Purchase Order.

Services means the services described in this Purchase Order.

Purchase Order means the Purchase Order preceding and including these Terms.

Supplier means the party described as such in this Purchase Order.

Council means the Macedon Ranges Shire Council

2. Completion

The Supplier must supply the Goods and/or complete the Services on or before the Delivery Date in accordance with this Purchase Order.

3. Warranties

In addition to other warranties in this Purchase Order and implied by law, it is a condition of the Council's purchase that:

3.1 for Goods -

- 3.1.1 the Goods will be new, unless agreed otherwise;
- 3.1.2 the Goods will be fit for the purpose for which items of the same kind are commonly supplied;
- 3.1.3 the Goods are merchantable quality and free from defects; and
- 3.1.4 the Supplier is capable of passing title in the Goods free of encumbrances and all other adverse interests at the time they are supplied to the Council.

3.2 for Services -

- 3.2.1 the Services will be supplied with all due care;
- 3.2.2 the Supplier has the qualifications, experience and expertise represented to the Council;
- 3.2.3 the Supplier has no conflict of interest in supplying the Services; and
- 3.2.4 the Services will conform to the reasonable requirements of the Council.

4. Variation or Termination

4.1 The Council may, at any time, by giving written notice to the Supplier, terminate this Purchase Order and the Supplier must on receipt of such notice immediately cease all work in connection with the supply of the Goods and take all appropriate action to mitigate any loss or prevent further costs being incurred. In such event the Council will pay for all Goods supplied and Services performed up to the date of termination and the reasonable fees and expenses of the Supplier in accordance with this Purchase Order 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 the Purchase Order been completed.

4.2 The Council may at any time give written notice to the Supplier proposing a variation to the quantity of the

Goods. The Supplier must, as soon as possible, or in any event within 7 days, provide a written proposal as to the varied Purchase Price that will apply for the provision of the varied Goods. The Council may accept the varied Purchase Price proposal within 7 days of receipt from the Supplier but in the absence of such acceptance this Purchase Order will continue as if no proposal under this sub-clause had been made.

5. Confidentiality

Both the Supplier and the Council will not disclose, and will ensure that its employees, agents and contractors do not disclose, any confidential information relating to the other or its affairs which may come to its or their knowledge during the term

6. Rejection of Goods or Services

The Council may reject any of the Goods or Services which do not comply in all respects with this Purchase Order. The Council is not required to make payment for any rejected Goods or Services.

7. Tax Invoices

The Council requires that all suppliers issue a compliant tax invoice for all goods and services supplied. All Tax Invoices must contain the relevant requirements as determined under the A New Tax System (Goods and Services Tax) ('GST Act') Act 1999.

All Tax Invoices must include reference to:

- The Suppliers ABN,
- The Councils Purchase Order Number,
- Delivery Docket Number,
- Quantity,
- Price per unit, and
- Total Invoice value.

All Tax Invoices must be sent by email to accountspayable@mrsc.vic.gov.au or by post to: Accounts Payable, Macedon Ranges Shire Council, PO Box 151, Kyneton VIC 3444

8. Payment

Payment will be made within 30 days from the receipt of a Tax Invoice that complies with the requirements in clause 7 provided the Goods or Services to which it relates have been delivered or performed.

Failure by the supplier to comply with clause 7 may delay payment.

9. Goods and Services Tax ("GST")

The Purchase Price is inclusive of GST. Where the Council is required to pay the Supplier any amount under this Purchase Order on account of GST, the amount representing GST will only be payable by the Council to the Supplier where the Supplier supplies to the Council a Tax Invoice (as required by the GST Act).

10. Default by Supplier or Council

10.1 If the Supplier or the Council defaults in the performance or observance of any obligation it has under this Purchase Order, the non-defaulting party may give notice to the defaulting party specifying the default and requiring that such default be remedied within 14 days.

10.2 If, within 14 days after receipt of the notice, the defaulting party fails to remedy the default, to the satisfaction of the non-defaulting party, the non-defaulting party (without prejudice to any other rights that it may have under this Purchase Order or at common law) may:

- 10.2.1 suspend payment or performance (as the case may be) under this Purchase Order; or
- 10.2.2 terminate this Purchase Order and any other purchase order between the parties.

11. Insolvency of Supplier

If the Supplier -

- 10.1 being a person, commits any act of bankruptcy; or
 - 10.2 being a company, commits any act of insolvency
- the Council may terminate this Purchase Order immediately.

12. Sub-Contracting and Assignment

Neither party may, except with the written consent of the other, sub-contract or assign the whole or any portion of its rights and obligations under this Purchase Order, and no sub-contractors or assignees will have any rights under this Purchase Order against either party or be entitled to receive any payments under this Purchase Order from the Council. Where a party gives its consent in accordance with this sub-clause, the assigning or subcontracting party remains fully responsible for performance under this Purchase Order.

13. Statutory Requirements

The Supplier and the Council must obey and must ensure that its employees, sub-contractors and agents obey any Acts, regulations and local laws in any way applicable to the performance of this Purchase Order, including, without limitation, any occupational health and safety legislation.

14. Indemnity and Advance Release

The Supplier indemnifies and holds harmless the Council, its Councillors and staff from and against all actions, claims, losses, damages, penalties or demands consequent upon, occasioned by or arising from its performance or purported performance of its obligations under this Purchase Order, including, without limitation, any acts or omissions of the Supplier's agents and employees.

The indemnity in this clause 14 is reduced to the extent the loss or liability is caused or contributed to by the Council.

15. Amendment

This Purchase Order may only be varied or replaced by a document duly executed by the parties.

16. Whole Understanding

This Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Goods are to be supplied by the Supplier. If the Supplier's acceptance or supply of this Purchase Order contains any terms in conflict with this Purchase Order, this Purchase Order will have precedence unless otherwise agreed by the Council in writing.

17. Governing Law

The law of the State of Victoria governs this Purchase Order and any legal proceedings under this Purchase Order.

18. Joint and Several Obligations

If the Supplier or the Council consists of two or more parties, this Purchase Order binds each of them severally and jointly.

19. Method of Giving Notices

A notice required or permitted to be given by one party to another under this Purchase Order must be in writing, addressed to the other party and:

- 19.1 delivered to that party's address; or
- 19.2 transmitted by facsimile to that party's facsimile number, or
- 19.3 transmitted by email to that party's specified email address.

20. Receipt of Notices

A notice given to a party in accordance with clause 19 must be treated as having been duly given and received:

- 20.1 if delivered to a party's address, on the day of delivery; or
- 20.2 if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received, on the day of transmission.
- 20.3 if transmitted by email to a party's email address and no failure transmission report is received by either party, on the day of transmission.

21. Work on Premises

If the Purchase Order, the supply of Goods or the provision of Services, involves any works or services which are performed on our premises then the Supplier must ensure that its employees, its sub-contractors and their employees and any other person associated with the Supplier:

- 21.1 will adhere to any regulations and requirements especially those under the Occupational Health and Safety Act 2004 (Victoria).
- 21.2 complete the MRSC online Contractor Induction System via the link <http://www.linksafe.com.au/mrsc/>

22. Corrupt Behaviour

If a supplier becomes aware of, or has information indicating, fraudulent, dishonest or unfair activity in relation to this purchase, the supplier is requested to inform Council's Chief Executive Officer.