

Definitions

- 1 In these "Terms and Conditions"
 - (a) **"Goods and/or Services"** means the goods and/or services set out in the Purchase Order.
 - (b) **"Adelaide Hills Council"** means **Adelaide Hills Council** ABN 23 955 071 393 of 63 Mt Barker Road, Stirling, South Australia 5152.
 - (c) **"Purchase Order"** means the purchase order to which these Terms and Conditions are attached. (d) **"Supplier"** means the person named on the face of the Purchase Order as the supplier of the Goods and/or Services.
 - (e) **"Terms and Conditions"** means the terms and conditions set out below and includes the Purchase Order.

General

- 2 Unless otherwise agreed in writing by the parties, these Terms and Conditions shall be the only terms and conditions on which Supplier will provide the Goods and/or Services to Adelaide Hills Council.
- 3 Where this Purchase Order is issued by Adelaide Hills Council pursuant to an existing contract between the Council and the Supplier, the terms and conditions of that contract shall govern the rights and obligations of the parties with respect to the Purchase Order. In any other case, the Contract Documents will govern the legal relationship between the Corporation and the Supplier insofar as it applies to the subject matter of this Purchase Order
- 4 These Terms and Conditions override any inconsistent terms or conditions in any document or other communication used by Supplier in relation to the provision of the Goods and Services or any industry practice or earlier course of dealing. This applies even if Supplier's acceptance of a Purchase Order or other document contains a similar condition to this one.
- 5 If the Supplier is providing Goods but not Services, references in these Terms and Conditions to the provision of Services will not apply. If Supplier is providing Services but not Goods, references in these Terms and Conditions to the provision of Goods will not apply.

Supply of Goods

- 6 The Goods must meet the description and specifications set out in the Purchase Order.
- 7 The Goods must be new, of merchantable quality, made of good materials and workmanship, and be free from defects. They must be fit for the purpose for which goods of the same kind are commonly supplied, and for any other purpose which Adelaide Hills Council makes known to Supplier. Supplier must comply with all relevant laws and standards adopted by the Australian Standards Association with respect to the manufacture or supply of the Goods.
- 8 Supplier must comply and ensure that its conduct is not inconsistent with Adelaide Hills Council's standards, operating principles, policies and procedures as provided to it from time to time.

Packaging

- 9 The Goods must be clearly labelled with printed, legible labels. All packages must include a packing list. Goods must be packed and marked in accordance with Adelaide Hills Council's instructions and any statutory requirements.

Delivery

- 10 Supplier must deliver the goods to the address specified by Adelaide Hills Council in the Purchase Order or in accordance with any special instructions notified by Adelaide Hills Council. Supplier must ensure that the Goods are protected against all damage and deterioration during transportation.

Acceptance and rejection

- 11 Goods delivered by Supplier are only accepted when they have been inspected by an authorised representative of Adelaide Hills Council. Adelaide Hills Council may reject Goods if they are defective or are not in accordance with Adelaide Hills Council's specifications. Goods that are rejected will be held by Adelaide Hills Council at the Supplier's risk. Supplier is liable for any loss or damage suffered or incurred by Adelaide Hills Council in relation to Goods that are rejected.
- 12 If Supplier delivers Goods in excess of the amount specified in the Purchase Order, Adelaide Hills Council will hold them at Supplier's risk. Adelaide Hills Council accepts no responsibility for any Goods delivered to a place or at a time not specified in the Purchase Order.

Title and Risk

- 13 Title and risk in the Goods pass to Adelaide Hills Council when Adelaide Hills Council has taken delivery of the Goods and when the Goods have been inspected and accepted by an authorised representative of Adelaide Hills Council. If Adelaide Hills Council pays for Goods before they are inspected and accepted, that does not constitute acceptance of the Goods.
- 14 Supplier warrants that it has the right to sell the Goods at the time when title to those Goods is to pass to Adelaide Hills Council and that on delivery of the Goods they will be free from any charge or encumbrance in favor of any third party.

Supply of Services

- 15 Supplier must provide the Services promptly, carefully and to the highest possible standards, exercising all due care, skill, and judgement. Services must be provided in an efficient, professional, cost effective manner and in accordance with accepted professional and business practices. Supplier must comply with any reasonable directions from Adelaide Hills Council in relation to the performance of the Services.
- 16 Supplier must comply with all legislation applying to the performance of the Services. Supplier must hold all authorisations, permits, licenses' and insurance required under any law to perform the Services.
- 17 If Supplier receives a complaint from any person in relation to the provision of the Services by Supplier, it must advise Adelaide Hills Council, in writing, of the complaint as soon as possible but not later than five (5) days after the complaint has been made. The notification must contain full details of the circumstances in which the complaint arose.

Key people

- 18 Supplier must ensure that the key people named in the Purchase Order are directly involved in the provision of the Services at all times. Supplier must not remove or replace any key people without Adelaide Hills Council's consent.

Employees

- 19 Supplier must engage sufficient employees with the necessary skills, expertise, qualifications and training to carry out the Services. Adelaide Hills Council may at any time request Supplier to withdraw any person from providing any part of the Services and replace the person if Adelaide Hills Council has reasonable grounds for making the request.

Rates and Charges

- 20 The rates and charges in the Purchase Order shall be fixed and shall be inclusive of all charges for packaging, insurance and delivery of the Goods, the cost of any items supplied in conjunction with the Goods or Services and all taxes.
- 21 A party must pay GST on a taxable supply made to it under these Terms and Conditions, in addition to any consideration (excluding GST) that is payable for that taxable supply.

Invoices and payment

- 22 Supplier must submit monthly tax invoices to Adelaide Hills Council detailing the payments to be made by Adelaide Hills Council. Adelaide Hills Council will pay, by cheque or electronic funds transfer, all correctly rendered invoices within 30 days of the end of the month in which the invoice is issued.
- 23 Adelaide Hills Council may withhold payment of any amount that it disputes in good faith until the dispute has been resolved.

Variations

- 24 Adelaide Hills Council may at any time direct Supplier in writing to alter or vary the supply of the Goods or Services. Supplier's obligation to provide the altered or varied Goods or Services will be subject to the parties agreeing the applicable rates or charges acting reasonably and with reference to the rates and charges set out in the Purchase Order.

Intellectual Property

- 25 All intellectual property discovered, developed or otherwise coming into existence as a result of, for the purposes of, or in connection with the provision of the Goods or Services ('Intellectual Property') will vest in and is assigned to Adelaide Hills Council on creation.
- 26 Supplier must not infringe the intellectual property rights of Adelaide Hills Council or a third party in performing its obligations under the Purchase Order. Supplier continually indemnifies Adelaide Hills Council against any loss, damages or expense that Adelaide Hills Council incurs or suffers, as a direct or indirect result of a breach of the intellectual property rights of Adelaide Hills Council or a third party in connection with the performance of its obligations.

Confidentiality and announcements

- 27 Unless required by law, Supplier must keep confidential all confidential information it receives from Adelaide Hills Council.
- 28 Supplier must notify Adelaide Hills Council immediately upon being contacted by any media representative in relation to any aspect of the provision of the Goods or Services and prior to undertaking any publicity or distributing any publicity material relating to the provision of the Goods or Services. Supplier must not provide any information whatsoever to a representative of the media without first having obtained the written consent of Adelaide Hills Council.

Subcontracting

- 29 Supplier must not subcontract the whole or any part of its obligations without Adelaide Hills Council's prior written consent.

Liability and indemnity

- 30 Supplier will be liable for and continually indemnifies Adelaide Hills Council and its officers, employees, representatives and agents against all loss, damages or expense suffered or incurred by any of those indemnified as a result of a breach of these Terms and Conditions by Supplier, or anything that Supplier or its employees, agents, subcontractors or representatives do or fail to do under or in connection with these Terms and Conditions.

Insurance

- 31 Supplier must maintain appropriate public liability insurance, goods in transit insurance policy to cover all Goods to be supplied, appropriate professional indemnity insurance to cover all Services to be supplied, workers' compensation insurance and any other insurance policies referred to in the Purchase Order.
- 32 The policies must cover Supplier and Adelaide Hills Council against any liability that may arise in the performance of Supplier's obligations under these Terms and Conditions.

Termination

- 32 Adelaide Hills Council may terminate the Purchase Order at any time by 14 days written notice to Supplier.
- 34 Adelaide Hills Council may immediately terminate the Purchase Order by written notice to Supplier if Supplier is in breach of these Terms and Conditions and does not remedy the breach (to the extent that it can be remedied) within five (5) days of receiving a written notice from Adelaide Hills Council specifying the breach and requiring it to be remedied or there is a significant risk that Supplier is unable to pay its debts as and when they fall due, including the appointment of a receiver, receiver and manager, liquidator or personal liquidator, administrator or controller.
- 35 Clauses, 25, 26, 27, 30, 32, 33, 34, 37 and 38 will survive the expiration or termination of these Terms and Conditions.

Warranty

- 36 Supplier represents and warrants on a continuing basis that all information, representations, warranties and undertakings made or given by it to Adelaide Hills Council before the date of the Purchase Order are true, complete and accurate in all respects.

Assignment

- 37 Supplier must not assign any of its rights or obligations under these Terms and Conditions without the prior written consent of Adelaide Hills Council.

Governing law and jurisdiction

- 38 These Terms and Conditions are governed by the laws of South Australia.

Severability

- 39 If any term or condition or part of a term or condition is illegal, unenforceable or invalid, that term or condition or part of the term or condition is to be treated as removed from these Terms and Conditions, but the rest of these Terms and Conditions are not affected.

Variation

- 40 No variation of these Terms and Conditions will be of any force or effect unless it is in writing and signed by the parties to these Terms and Conditions.

Waiver

- 41 Any failure by a party to exercise any of its rights or powers under these Terms and Conditions is not a waiver of those rights or powers. A waiver is only effective if it is in writing.

Ombudsman

- 42 The Supplier acknowledges that the Ombudsman Act 1972 (SA) empowers the Ombudsman to investigate matters of public interest. The Contractor must ensure compliance with all obligations arising under the Act and all other applicable laws.

ICAC

- 43 The Supplier acknowledges and agrees that by entering into this agreement with the Council the Supplier will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act, 2012* (SA) (ICAC Act) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

CITB Levy

- 44 Where the CITB levy is applicable to the supply of Goods and Services under the Construction Industry Training Fund Regulations 2008, the Contractor is responsible for the payment of the CITB levy.
- 45 The contractor must provide proof that the CITB levy has been paid prior to work commencing.

Work Health and Safety

- 46 In complying with its obligations pursuant to this agreement, the Supplier agrees to:
- Comply with any environmental requirements of the Council communicated from time to time by the Council to the Supplier;
- 47 Comply with all requirements of the *Work Health and Safety Act 2012* (SA) and any regulations made under it;
- 48 Promptly notify the Council of any accident, injury, property or environmental damage or any potential breach of any law (reportable incident) that occurs during or as a result of this agreement. Within 24 hours of a reportable incident, the Supplier must provide a report to the Council's Representative giving complete details, including the results of investigations into its cause and recommendations or strategies for prevention in the future.