

Waikato Regional Council

Purchase order terms and conditions

for the provision of services

Definitions

Parties means the Supplier and the Waikato Regional Council.

Purchase Order means an order issued and authorised by Waikato Regional Council that normally contains the following information:

- a) a Purchase Order Number;
- b) a description of the Services required by Waikato Regional Council;
- c) the price of the Services;
- d) the commencement date and completion date of the Services;
- e) any particular specifications relating to the Services;
- f) any special instructions relating to delivery of the Services;
- g) the Supplier's name and contact telephone number;
- h) the Waikato Regional Council contact person name and telephone number;
- i) any other specific information required by Waikato Regional Council's management systems.

Purchase Order Number means an identification number, unique to each Purchase Order, which is stated on the Purchase Order.

Service means work performed for Waikato Regional Council in consideration for money and specified on a Purchase Order.

Supplier means an individual, organisation (incorporated or unincorporated) or company that supplies the Services.

Tax Invoice means an invoice provided by the Supplier to Waikato Regional Council pursuant to the Goods and Services Tax Act 1985.

Terms and Conditions mean these Waikato Regional Council Purchase Order Terms and Conditions for the Provision of Services.

Work Brief means the document that may accompany the Purchase Order which may contain additional information regarding the Services.

Working Day means a day (other than a Saturday or a Sunday) on which registered banks are open for business in Hamilton, New Zealand.

Interpretation: In the construction and interpretation of this Terms and Conditions, unless the context otherwise requires:

- j) the introduction, headings and marginal notes do not affect interpretation of the Agreement
- k) words importing one gender include other genders and a singular includes the plural and vice versa
- l) a reference to a clause or schedule is a reference to a clause or schedule of these Terms and Conditions
- m) a reference to a “month” means calendar month
- n) a statute includes that statute as amended from time to time and any regulations, other Orders in Council, and other instruments issued or made under that statute from time to time, as well as legislation passed in substitution for that statute
- o) references to “written” and “in writing” include any means of permanent visual representation

1 Contract for Services takes precedence

- 1.1 If a formal written contract is in place for the supply of Services the terms and conditions of that contract shall take precedence over these Terms and Conditions.

2 Acceptance of Order

- 2.1 All orders for Services must be made using a Purchase Order.
- 2.2 A Purchase Order is an offer by Waikato Regional Council to purchase the Services. The offer is deemed to be accepted upon the Supplier agreeing or commencing to supply the Services to which the Purchase Order relates.
- 2.3 These Terms and Conditions are deemed to be accepted upon the Supplier agreeing or commencing to supply the Services to which the Purchase Order relates.

3 Withdrawal and Expiry of Purchase Order

- 3.1 Waikato Regional Council can withdraw the Purchase Order at any time prior to the Supplier agreeing or commencing to supply the Services to which the Purchase Order relates.
- 3.2 A Purchase Order will expire 21 days following its issue unless accepted by the Supplier.

4 Price

- 4.1 The price stated in the Purchase Order is exclusive of GST and any duty, but is otherwise all inclusive of any other charges or taxes.
- 4.2 Any variation to price must be notified prior to acceptance of the Purchase Order by the Supplier.
- 4.3 If no price is stated on the Purchase Order the Supplier must advise Waikato Regional Council as soon as a price can be confirmed.

5 Standards and Resources

- 5.1 The Supplier will exercise due skill and care in providing the Services to Waikato Regional Council in accordance with any specifications and requirements, which Waikato Regional Council advises and to accepted industry standard.
- 5.2 The Supplier will provide the Services using its own resources unless otherwise agreed by Waikato Regional Council.

6 Invoicing and Payment

- 6.1 All Tax Invoices must be posted to:

Waikato Regional Council
Accounts Payable
Private Bag 3038
Waikato Mail Centre
Hamilton 3240

- 6.2 All Tax Invoices must quote the Purchase Order Number.
- 6.3 Waikato Regional Council's preferred method of payment is direct credit by electronic file transfer.
- 6.4 Prior to accepting the Purchase Order the Supplier must provide to Waikato Regional Council the required bank account details and a deposit slip for direct payment to be enabled.
- 6.5 The Supplier will invoice Waikato Regional Council within 5 (five) working days of delivery of the Services in accordance with these Terms and Conditions
- 6.6 If correct Tax Invoices are received by Waikato Regional Council by the 5th Working Day of the month, undisputed amounts due from Waikato Regional Council shall be paid to the Supplier by the 20th day of that month in respect of Services completed in the preceding month.
- 6.7 If correct Tax Invoices are not received by Waikato Regional Council by the 5th Working Day of the month, or the Tax Invoices are disputed then payment will not be made until the following 20th of the month or the 20th of the month following resolution of the disputed payment.
- 6.8 Invoices for partial completion of the Services will not be accepted (unless progress payments are agreed to by Waikato Regional Council prior to the Services commencing).
- 6.9 Waikato Regional Council shall deduct withholding tax where required by law.
- 6.10 Waikato Regional Council will not be liable for late penalty payments if payment is delayed for any reason.
- 6.11 The Supplier warrants that the Price is no less favourable than the price paid by any other purchaser for the same Services supplied by the Supplier in substantially similar circumstances.

7 Status of the Supplier

- 7.1 The Supplier is and shall remain at all times an independent Supplier and is not the servant, employee or partner of Waikato Regional Council.

8 Liability & Insurances

- 8.1 Where the Supplier breaches these Terms and Conditions, the Supplier is liable to Waikato Regional Council for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Supplier shall not be liable to Waikato Regional Council for Waikato Regional Council's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort, or otherwise.
- 8.2 The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities or expenses shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$NZ250,000.
- 8.3 Neither Party shall be liable for any loss or damage occurring after a period of six years from the date on which the Services were completed.
- 8.4 The Supplier shall effect and maintain appropriate insurances in respect of the Services including Public Liability Insurance cover and Professional Indemnity Insurance Cover (where appropriate) for the amount of liability under clause 8.2 and any other further insurance as described in the Purchase Order, Work Brief or other documentation to which the Purchase Order relates. The Professional Indemnity Insurance shall be held for a period of 6 years from completion of the Services.
- 8.5 The Supplier is solely responsible for payments of all taxes, duties or levies which may be payable by the Supplier on the fees or any other payments made by Waikato Regional Council and Waikato Regional Council shall make no deductions on account of tax or any other imposition except where Waikato Regional Council is required by law to do so.

9 Legal Compliance

- 9.1 The Supplier will ensure that the provision of the Services complies with all New Zealand laws, codes and standards.
- 9.2 The Supplier must obtain every necessary and prudent authorisations to ensure that it can complete the Services and Waikato Regional Council can at all time enjoy the full benefits of the Services.
- 9.3 The Supplier shall comply with all legislation, regulations, standards and any industry codes of practice during the performance of the Services.

10 Neglected Property

- 10.1 If the Supplier's property is not removed from any relevant Waikato Regional Council property or job site when required by Waikato Regional Council, it may be disposed of by Waikato Regional Council at the Suppliers risk and cost.

11 Intellectual Property

- 11.1 Any intellectual property created by the Supplier during the performance of the Services is the exclusive property of Waikato Regional Council.

11.2 The Supplier shall be liable to Waikato Regional Council for all losses, damages, costs, actions, proceedings, claims and demands which Waikato Regional Council may incur or be subject to from a third party to the extent caused by any infringement by the Supplier of any intellectual property rights of that third party.

12 Confidentiality

12.1 The Supplier will maintain and aid in maintaining confidentiality of all Waikato Regional Council information which comes into the Suppliers possession or knowledge as a result of performing the Services.

12.2 The Supplier acknowledges that as Waikato Regional Council is a local authority it is subject to the provisions of the Local Government Official Information and Meetings Act 1987 and therefore may be required to disclose information relating to the Services including the Purchase Order, Work Brief and other documentation to which the Purchase Order relates.

13 Health and Safety

13.1 The Supplier shall at all times comply with their own Health and Safety Policy and all applicable health and safety requirements as set out in the Health and Safety in Employment Act 1992, and shall take all practicable steps when providing the Services to:

- 13.1.1 ensure that no act or omission by the Supplier causes a hazard or harm to any person on, in or about the site where the Supplier is carrying out the Services;
- 13.1.2 provide and maintain a safe working environment;
- 13.1.3 identify and control any existing hazards or any hazards that may arise while performing the Services;
- 13.1.4 Report to Council any existing hazards or any hazards that may arise while performing the Services;
- 13.1.5 ensure that any employee or sub-Supplier involved in carrying out the Services is not unnecessarily exposed to hazards which are under the Supplier's control; and
- 13.1.6 have proper procedures in place for dealing with emergencies that may arise;
- 13.1.7 have emergency plans in place;
- 13.1.8 maintain a register of accidents and serious harm;
- 13.1.9 investigate accidents and identify their cause;
- 13.1.10 ensure that all persons under the Supplier's control are appropriately trained, competent and supervised;
- 13.1.11 ensure the use of all necessary safety equipment;
- 13.1.12 notify Waikato Regional Council immediately of anything which the Supplier believes is a hazard or potential hazard to health and safety or any event which gives or may give rise to the Supplier being in breach of any of the requirements of the Health and Safety in Employment Act 1992;
- 13.1.13 provide Waikato Regional Council with a copy of its task specific health and safety documentation, if requested;
- 13.1.14 so far as the work site and the Services are under the Supplier's control, take all practicable steps to keep the work site under its control and to keep it in an orderly state and in such a condition as to avoid danger to persons and property; and
- 13.1.15 subject to clause 13.2 ensure that any sub-Suppliers involved in carrying out the Services abide by these health and safety requirements.

13.2 Waikato Regional Council has the right to audit the Services for health and safety compliance at any time during the performance of the Services. Waikato Regional Council is under no obligation to advise the Supplier that such an audit is to take place.

14 Suspension and Termination of the Services

14.1 Waikato Regional Council may suspend all or part of the Services where the Supplier has, or may have, breached any of its obligations under these Terms and Conditions including but not limited to health and safety obligations. In such circumstances the Supplier shall immediately make arrangements to stop the Services and cease further expenditure.

14.2 Following acceptance by the Supplier, Waikato Regional Council may terminate this Agreement:

14.2.1 immediately by notice in writing to the Supplier at any time if the Supplier commits a material breach to this Agreement; or

14.2.2 on 30 days' notice in writing to the Supplier at any time.

14.3 Termination or suspension of the Purchase Order and these terms and conditions is without prejudice to the rights and obligations of the parties' accrued up to and including the date of termination or suspension.

15 Dispute Resolution

15.1 The parties shall attempt in good faith to settle any dispute by negotiation. If negotiation is unsuccessful then mediation shall be used. Failing agreement on a mediator, one shall be appointed by the President of the New Zealand Law Society.

16 General Provisions

16.1 **Amendments:** No amendment or waiver of any provision of these Terms and Conditions, nor any consent to any departure by any party from any such provision, shall in any event be of any effect unless it is in writing, signed by the parties or in the case of a waiver, by the party giving it.

16.2 **Assignment:** Neither party may sell, transfer, assign or sub-contract all or any part of its interests or obligations under these terms and conditions without the other party's written consent.

16.3 **Entire Agreement:** These Terms and Conditions, the Purchase Order and other documentation to which the Purchase Order relates including the Work Brief, constitute the entire agreement between the parties.

16.4 **Law:** This agreement between the Parties is governed by New Zealand law, New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

16.5 **Time:** Time will be of the essence for the performance of any of the Supplier's obligations under this agreement.