

# Purchase Order Terms and Conditions



## Terms and Conditions

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Purchase Orders are subject to these Terms and Conditions and they are acknowledged, understood and accepted by the Seller.

### 1. Definitions

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1.1 In these Terms and Conditions:

**Buyer** means Port Phillip City Council.

**Goods** where applicable means the goods the subject of and described on the face of the Purchase Order.

**Purchase Order** means the Purchase Order to which these conditions apply

**Seller** means the person, firm, partnership, company or other legal entity to whom the Purchase Order is issued to provide the goods to perform the works as the case may be and includes its servants, agents and sub-contractors.

**Works** where applicable means the works the subject of and described on the Purchase Order.

**GST** means goods and services tax in accordance with the A NEW Tax System (Goods and Services Tax) Act 1999

**Tax Invoice** has the same meaning as the definition contained in the A NEW Tax System (Goods and Services Tax) Act 1999.

### 2. Price

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2.1 The Seller shall furnish all necessary Goods, labour, materials, tools, equipment and supervision required for the fixed price section on the Purchase Order, which price includes all applicable taxes (including GST), insurance, supervision, costs and other direct and indirect costs of whatever character and description.

### 3. Works Performed

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3.1 All Works shall be performed, and all Goods shall be delivered in strict accordance with the Terms and Conditions herein - all of which form part of The Purchase Order.

### 4. Goods Delivered

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4.1 If quantities of Goods delivered or Works completed are in excess of those specified by the Buyer on the Purchase Order, the excess will not be accepted or paid for by the Buyer.

4.2 Material Safety Data Sheets must be supplied with Goods (where applicable).

### 5. Completion and Delivery

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5.1 The Works shall be completed by the time specified (if any) on the Purchase Order.

5.2 The Goods shall be delivered to the place and date specified on the Purchase Order unless otherwise agreed between the Buyer and the Seller.

5.3 Time is of the essence so far as it applies to the obligations of the Seller. If any Goods are not delivered or Works are not completed within the time specified (if any) in the Purchase Order the Buyer may either (where appropriate):

(a) refuse to accept the Goods and terminate forthwith the Purchase Order.

(b) cause the Seller to deliver the Goods by the most expeditious means and any additional delivery charges shall be borne by the seller.

(c) obtain a reduction in the price paid for the Works specified in the Purchase Order.

## **6. Quality**

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- 6.1 The Seller warrants that the Goods:
- (a) conform with the description provided by the Seller.
  - (b) conform with any applicable specifications agreed by the Buyer and the Seller.
  - (c) are of merchantable quality and are fit for the purpose for which they are sold.
  - (d) are fit for the specific purpose (if any) of which the Buyer has advised the Seller in writing.
  - (e) are free of defects in material, workmanship and design.
  - (f) are new (unless otherwise specified); and
  - (g) are free from all liens and encumbrances and the Seller has good title to them.
- 6.2 The Seller warrant that the Works:
- (a) will be rendered with due care and skill by competent and training personnel; and
  - (b) any materials supplied in connection with the services will be reasonably fit for the purposes for which they are supplied.

## **7. Loss or Damage in Transit**

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- 7.1 The Buyer shall advise the Seller of any loss or damage to or defect in the Goods at the end of the sixty (60) days of the date of delivery or intended date of delivery (as the case may be) and the Seller shall make good free of charge to the Buyer any loss or damage to or defect in Goods as notified by the Buyer.

## **8. Inspection**

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- 8.1 The Seller agrees that the Buyer and its agents shall have the right to inspect all Works performed pursuant to the Purchase Order while in any stage of engineering, manufacture or installation of the Goods prior to their dispatch. The Seller shall

make this is a condition of any Works performed pursuant to the Purchase Order by any third party. Any such inspection shall not relieve the Seller of any obligations contained in the Purchase Order or required by law.

## **9. Rejection**

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- 9.1 Notwithstanding Clauses 8 or 9 the Buyer or its agents may reject any Goods or Works performed or being performed that do not conform to the Purchase Order and any Works or Goods rejected shall be re-performed or re-delivered (as the case might be) at no additional cost to the Buyer. The Seller shall reimburse the Buyer for:
- (a) any purchase price paid (including GST) by the Buyer with respect to rejected Goods or Works.
  - (b) any costs reasonable incurred by the Buyer in connection with the rejection of the Goods or Works.

## **10. Alterations / Additions**

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- 10.1 No alterations or additions to the Works or the character or description of the Goods shall be made by the Seller unless the Seller has first obtained written approval from the Buyer's authorised officer.

## **11. Title and Risk**

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- 11.1 Title to and risk of loss in the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with Clause 6.2 but without prejudice to any right of rejection or other rights which may apply to the Buyer under these conditions.

## **12. Insurance**

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- 12.1 The Seller shall maintain at its own expense adequate insurance including without limitation public liability insurance of an amount of at least \$10,000,000.00, Workcover, automotive and other means or transportation or freight liability Insurance and product damage insurance on such

terms or for such amounts as are reasonable in the circumstances of the Purchase Order.

- 12.2 The Seller shall provide evidence of all policies of insurance above and the currency thereof prior to the Buyer undertaking the Works or delivering the Goods.

### **13. Terms of Payment**

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- 13.1 The Seller shall promptly render Tax Invoices for the Works or Goods in accordance with the Buyer's instructions. In the absence of any special arrangement the Buyer shall effect payment to the Seller within thirty (30) days of the commencement of the month following invoice.

### **14. Subcontracting and Assignment**

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- 14.1 The Seller shall not assign its rights or obligations under these Terms and Conditions, sub-contract the Works or the provision of the Goods pursuant to the Purchase Order without the prior written consent of the Buyer and any such consent shall not relieve the Seller of its responsibility for the Works or the Goods pursuant to the Purchase Order or of any other obligations contained in the Purchase Order.

### **15. Packaging**

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- 15.1 Goods shall be properly packed to avoid being damaged during delivery or loading and unloading. All packages shall be clearly marked with the Purchase Order number and location of delivery.
- 15.2 The Seller shall comply with all applicable Australian and international laws, regulations and other relevant requirements relating to the transport, packaging, storage, handling and use of the Goods.

### **16. Applicable Law**

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- 16.1 The Purchase Order shall be governed in accordance with the laws of Victoria and the parties hereto submit to the non-exclusive jurisdiction of the Courts of Victoria.

### **17. Termination**

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- 17.1 If the Seller fails to comply with these Terms and Conditions or repudiates this Agreement or if the Seller becomes insolvent commits and act of bankruptcy, stops payment of debts, calls a meeting of or enters into composition with or for the benefit of the Seller's creditors or has a receiver / manager, manager administration, controller or liquidator appointed to its undertaking or assets or any part thereof of a winding up petition is presented against the Seller or the Seller goes into liquidation, the Buyer may at its discretion or regardless of any default of failure and without prejudice to its other rights forthwith cancel or suspend the contract or any unfilled part of the contract. In the event of cancellation of suspension as aforesaid, the Buyer shall not be liable for any loss, damages, costs or expenses however arising from such cancellation or suspension.

### **18. Independent Contractor**

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- 18.1 The relationship between Council and the Contractor is that of principal and independent contractor and nothing in the Agreement shall be taken as constituting Council and the Contractor or any of the contractors, directors or employees as being in the relationship of joint venture, master and servant, employer and employee, or partners, nor shall anything in this Agreement constitute the Contractor or any of its directors or employees as being agent of the Council.

## **19. Statutes**

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19.1 The Seller shall comply with all statutes, ordinances, by-laws and regulations in connection with its responsibilities under this Agreement.

## **20. Disputes**

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20.1 If the dispute is not resolved through negotiations, the parties agree that with the exception of seeking urgent interlocutory relief, they will attempt to resolve the dispute through mediation before commencing legal proceedings.

## **21. Notices**

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21.1 Any notices required pursuant to these Terms and Conditions shall be in writing and shall be validly given only if signed by a duly authorised person on behalf of either party and addressed to the parties at the address specified on the Purchase Order and shall be deemed to be duly given or made;

- (a) in the case of a letter, at the expiration of seventy two (72) hours after the time of posting by pre-paid ordinary post or at the time of actual receipt by the addressee whichever occurs first.
- (b) in the case of a facsimile or email, when sent.
- (c) in the case of a personal delivery, when delivered.

## **22. Acceptance**

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22.1 If written acceptance of these Terms and Conditions is not communicated by the Seller to the Buyer the supply of the Goods by the Seller to the Buyer or the commencement of Works by the Seller shall constitute acceptance of these Terms and Conditions by the Seller.

## **23. Other**

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23.1 Where the Purchase Order is under contract, Contract terms and conditions will prevail over these terms and conditions.