

# SWAN HILL RURAL CITY COUNCIL TERMS AND CONDITIONS OF PURCHASE

## 1 INTRODUCTORY ISSUES

1.1 The following terms will, unless inconsistent with the context, have the meanings indicated:

“**Contract**” means the contract evidenced by these Conditions of Purchase, the Purchase Order and any other documents to which reference is made in the Purchase Order;

“**Creditor**” means the party identified as such on the Purchase Order;

“**Council**” means the Swan Hill Rural City Council;

“**Contact Officer**” means:

1.1.1 the person named as such in the Purchase Order; or

1.1.2 any other person nominated by the Council from time to time in writing;

“**Goods**” means any goods to which the Purchase Order applies;

“**GST**” has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999

“**Purchase Order**” means the document on the reverse side of this page; and

“**Services**” means any services to which the Purchase Order applies.

1.2 In this Contract, unless inconsistent with the context, a reference to a person includes a reference to a firm, corporation or other corporate body and vice versa.

1.3 This Contract constitutes the whole understanding between the parties and embodies all terms and conditions under which Goods or Services are to be supplied by the Creditor.

1.4 The law of the State of Victoria governs this Contract and any legal proceedings under this Contract.

1.5 If the Creditor consists of two or more parties, this Contract binds each of them severally and jointly.

1.6 It is acknowledged and agreed that this Contract does not fetter or restrict the powers or discretions of the Council in relation to any powers or obligations it has under any Act, regulation or local law that may apply to the Creditor.

## 2 GOODS OR SERVICES

2.1 The Creditor must supply the Goods or Services specified in the Purchase Order by any date stated in the Purchase Order (or otherwise within a reasonable time) in accordance with this Contract.

2.2 Any Goods must be delivered by the Creditor to the place stated in the Purchase Order (unless otherwise stated in the Purchase Order) and unloaded in accordance with any directions given by the Contact Officer. Any Services must be provided at any place stated in the Purchase Order. The Council accepts no responsibility for any goods delivered to locations or at times other than those specified on this order.

2.3 It is a condition of the Council's purchase of any Goods that: -

2.3.1 the Goods will be fit for the purpose for which items of the same kind are commonly supplied;

2.3.2 the Goods are of merchantable quality; and

2.3.3 the Goods carry any applicable manufacturer's warranties (which will be passed to the Council on the supply of the Goods).

2.4 Title to any Goods free of encumbrances and all other adverse interests will pass to the Council upon the Goods coming into the possession of the Council or its employees or agents.

2.5 The Contact Officer may reject any Goods or Services, which do not comply in all respects with this Contract. The Council is not required to make payment for any rejected Goods or Services.

2.6 The Creditor 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 Contract, including, without limitation, any occupational health and safety legislation.

## 3 DRAWINGS ETC

3.1 All drawings specifications and data furnished to the creditor remain the property of the Council and shall not be disclosed or used except as required by this order.

3.2 Upon the completion or other termination of the work under this Purchase Order the creditor will return all such drawings,

specifications and data together with all copies of such documents and shall make no further use either directly or indirectly of any information derived therefrom without Council's prior consent in writing. In particular all art work together with blocks and/or plates which have been prepared in connection with the supply of stationery or printed matter are the property of Council and are to be delivered to the council at the same time as the Goods are supplied.

3.3 Copyright in any artwork or design created to fulfil this order is owned by Council as and when it is created.

## 4 PAYMENTS

4.1 If the Creditor complies with its obligations under this Contract, the Council must make the payment or payments specified in the Purchase Order within 30 days from the end of month of its receipt of an invoice for any Goods or Services.

4.2 The Creditor must not forward an invoice to the Council until all of the Goods or Services have been delivered or provided (unless otherwise stated in the Purchase Order).

4.3 Any invoice forwarded to Council in respect of Goods or Services to be supplied on or after 1 July 2000 must be a Tax Invoice in a form acceptable to Council.

## 5 SUB-CONTRACTING AND ASSIGNMENT

The Creditor must not, except with the written consent of the Contact Officer, sub-contract or assign the whole or any portion of its rights and obligations under this Contract, and no sub-contractors or assignees will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council.

## CLAUSE 6 - INSURANCE AND INDEMNITY

6.1 The Contractor and any sub-contractor of the Contractor must, in respect of all of their employees, comply with the provisions of the *Accident Compensation Act 1985* or any other workers' compensation legislation in operation from time to time.

6.2 The Creditor must indemnify the Council, and its Commissioners, Councillors and members of 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 Contract, including, without limitation, any acts or omissions of the Creditor's agents and employees.

## 7 CONFLICTION CONDITIONS OF CREDITOR

7.1 If any conditions contained in the Creditor's quotation, acceptance of order or other documentation shall be contrary to or differ from the above conditions except where those conditions expressly contemplate such the above conditions shall prevail.

7.2 Acceptance of this Purchase Order and/or performance thereof shall be deemed to be acceptance of this condition notwithstanding that the acceptance of order or other documentation of the Creditor may contain a condition similar in terms to this condition.

7.3 Should the Creditor be unable or unwilling to accept any of the conditions contained herein, then the purchase order should be returned.

## 8 PACKING AND DELIVERY

Unless otherwise agreed in writing the cost of delivery including boxing, packing, crating, cartage and storage shall be borne and paid by the Creditor.

## 9 PRICE

9.1 The price stated on the order is Fixed and inclusive of GST and no variation will be accepted for any reason whatsoever, without the prior approval of a duly authorised representative of the Council.

9.2 To the extent that any tax reform results in the abolition or reduction of tax, duty, excise or other change which reduces the cost to the Creditor of making supply of goods or services to the Council in accordance with the contract, such savings will be passed on to the Council in the form of a reduction in price payable for the goods or services.

## 10 CANCELLATION

Council has the right to cancel this Purchase Order or any undelivered part of such order if the Creditor does not make deliveries strictly in accordance with the delivery schedule or commits any other breach of the terms of such schedule thereof, becomes insolvent or commits an act of bankruptcy or being a company has a liquidator, receiver or official manager appointed. Such right of cancellation in addition to and not in lieu of any other remedies which Council may have in law or equity.