

Standard Terms and Conditions Contract forming part of Councils Official Order

1. Contract

Subject to **clause 2** below, these are the terms and Conditions on which Council has issued an Order in acceptance of Your Offer to provide Work and forms the basis of the binding Contract between Council and the Contractor. You agree to transact with Council in a manner consistent with good governance practices and agree that you will observe and comply with the Council's Code of Conduct and Statement of Business Ethics as adopted by Council current at the date of this Contract.

2. Other Contract Conditions

If this Order relates to Work that is the subject of a formal written contract, then the conditions of that contract shall prevail to the extent of any inconsistency with the following terms and conditions of Contract.

3. Delivery

Council must issue an official Order prior to the supply of any Work. The Contractor must provide the Work at the time and at the location required by Council. The Council must acknowledge receipt of goods supplied.

4. Price

- (a) Council agrees to pay the Price to the Contractor no later than 30 days after receipt of a valid tax invoice.
- (b) Unless otherwise agreed in writing between the parties, the Contractor must not give Council a tax invoice until the Council has acknowledged receipt of the Work.
- (c) All tax invoices must refer to Councils official Order number.

5. Passing of Risk and Ownership

Risk in the Work and ownership of the Work passes to the Council upon payment of the Price.

6. Warranties

- (a) The Contractor represents and warrants to the Council that:
 - (i) the Work corresponds to the description in the Offer and Order and conforms to all specifications, drawings, samples, and descriptions provided by the Council to the Contractor;
 - (ii) the Work is reasonably fit for the purpose for which it is intended;
 - (iii) the Work is of the quality specified (or, if no quality is specified, the best merchantable quality);
 - (iv) the Work is free of any lien or encumbrance;
 - (v) the Council is entitled to the benefit of any manufacturers warranties in respect of the Work; and
 - (vi) the Work complies with all laws and requirements relevant to the provision of the Work.
- (b) All representations and warranties implied by law relating to the Work or its provision forms part of the Contract and are not excluded, restricted or modified by the application to the Contract of any provision of the *Trade Practices Act 1974* (Cwlth) or State Fair Trading Acts or their equivalents.

7. Defects

- (a) The Contractor represents and warrants that the Work is free of any omissions or defects or other failures (**Defects**) howsoever arising which renders the Work unsuitable for Council's requirements and which occur at any time from the date on which the Council acknowledges receipt of the Work until the date being 12 months after that date (**Defects Liability Period**).
- (b) The Contractor must do any 1 or more of the following if required by Council if any Defects are identified:
 - (i) refund the Price if Council returns the Work to the Contractor;
 - (ii) repair, modify or replace (at the Contractor's cost) any of the Work that has a Defect; or
 - (iii) reimburse Council (on demand) for all costs and expenses incurred by the Council as a result of the Defect.

8. Indemnity and Insurance

- (a) The Contractor indemnifies Council from and against all actions, claims, costs, expenses, and damages in respect of:
 - (i) Any loss of or damage to any Council property, or damage of any kind suffered by Council, or
 - (ii) personal injury to any person or loss of or damage to any property,arising out of or by reason of any negligent or wilful act or omission by the Contractor in the provision of the Work or a breach of the Contract.
- (b) The Contractor must (at its cost) establish and maintain a public and products liability insurance policy for an amount of not less than \$20 million for any one occurrence in respect of the Work from the date of this Contract until the end of the Defects Liability Period.
- (c) All insurance policies established under this **clause 8** must be on terms that Council considers satisfactory. The Contractor must give Council evidence that the insurance policies required under this clause have been established no later than 7 days after receiving a request from Council to provide such evidence.

9. Termination

- (a) Council may terminate the Contract by written notice to the Contractor:
 - (i) if the Contractor breaches a term of the Contract and fails to remedy the breach within 14 days of the receipt by it of a notice from Council specifying the breach and requiring the Contractor to remedy it;
 - (ii) if Council is of the reasonable opinion that the Contractor is unable or unwilling to comply with its obligations under the Contract; or
 - (iii) if the Contractor becomes bankrupt or makes an assignment of its estate for the benefit of its creditors or makes a composition or other arrangement with its creditors or if, being a company, the Contractor goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Contractor.
- (b) Termination of the Contract pursuant to this clause shall be without prejudice to the rights of either party accruing before termination.
- (c) The Contractor will be liable to Council for any loss whether direct, consequential, economic, or otherwise suffered by Council and arising out of or in connection with such termination or prior breach.
- (d) Council will not be liable to the Contractor for any loss, whether direct, indirect, consequential, economic, or otherwise, suffered by the Contractor and arising out of or in connection with termination of the Contract.

10. No Assignment or Sub -Contracting

The Contractor must not assign, sub -licence or sub -contract the provision of the Goods (wholly or partly) without the Council's prior written consent.

11. Definitions

In this Contract:

Contract means this document comprising the details appearing on the front page of order and the terms included with the order.

Contractor / You means the legal entity described in the details appearing on the front page of the Purchase Order and includes its servants and agents.

Council means Ku-Ring-Gai Council ABN 86 408 856 411 and includes its servants and agents.

Order means the Purchase Order issued by the Council.

Offer means the Contractor's Offer to provide the Work

Price means the amount stated in the details appearing on the front page of the order inclusive of GST, cost of delivery and any other on costs.

Work means all goods, services, products, work, or materials described in the details appearing on the front page of the Order.