

Purchase Order - Standard Terms and Conditions

1. General

These conditions apply to any purchase order for goods (*also identified as 'products' or 'materials'*) and/or services placed by Goldenfields Water County Council (GWCC) and must be read in conjunction with any contract specified in an individual purchase order. If there is any inconsistency between these conditions and of the contract, the contract terms and conditions will prevail. The terms of this contract are deemed to be accepted by the supplier or contractor and to apply by virtue of their performance of any part of the services.

2. Contract and Term

- (a) GWCC may, at any time, require the supplier or contractor to enter a standard contract and, if it does so, that standard contract will apply to the services and will supersede this contract.
- (b) This contract continues until the services have been completed, unless it is terminated earlier in accordance with this contract.
- (c) The supplier must comply with GWCC's directions and instructions in the performance of the contract. If required by GWCC, the supplier must co-operate with other consultants and suppliers engaged by GWCC.
- (d) Any variations to this contract must be agreed by the parties in writing.

3. Quality, Delivery and Performance

The supplier must, as specified in the Purchase Order:

- (a) Provide goods or services safely and appropriately to protect it from damage including packing products or materials properly for delivery; and
- (b) deliver the goods or services:
 - (i) by the date and time;
 - (ii) to the place; and
 - (iii) in the quantity
 Accepted by GWCC acknowledging receipt of goods and services if they have provided them and considered satisfactory.
- (c) The supplier must also supply all resources such as tools, facilities, materials and other resources necessary to perform the service as agreed.
- (d) Good governance practices must be observed and complied with when dealing with GWCC in accordance with the adopted Code of Conduct and Business Ethics Policies.
- (e) Regularly and diligently progress the execution of the supply of goods or service/s in accordance with the requirements of the contract to meet the completion date stated in the purchase order or as otherwise advised by GWCC in writing to the supplier.

4. Ownership and Risk

- (a) Risk for products supplied and ownership of them will pass to GWCC upon payment of the goods or services.
- (b) The supplier assumes all risk in the goods or services until accepted by GWCC in accordance with Clause 4 (a).
- (c) This includes applicable laws and guidance by NSW and Commonwealth for GWCC's information security management for cybersecurity.

5. Warranties

- (a) In addition to any warranties implied by law, the supplier warrants that:
 - (i) the goods or services are free from defects in material and workmanship being of merchantable quality. If no quality measures are specified, the quality is expected to be that of a professional competent supplier experienced in providing similar goods or services.
 - (ii) it has a right to provide the goods or services.
 - (iii) the goods or services are free from any charge or encumbrance in favour of any third party not declared or known to GWCC before or at the time the purchase order is made.
 - (iv) the goods or services are of the description, requirements, conform to samples/description provided to GWCC and of acceptable quality specified by the contract delivered through a purchase order.
 - (v) the goods or service provided are fit for the purpose in which they are intended and performed with the degree of professional skill, care, and diligence expected of a competent professional supplier.
 - (vi) the goods or services comply with all applicable Australian standards, legislation, regulations, codes of practice and GWCC policy framework.

- (vii) goods supplied do not infringe any patent, registered design, trademark or name, copyright or any other protected right.

- (b) The supplier will ensure that any warranty offered by a manufacturer of the goods sees GWCC entitled to such benefit in respect of the services.
- (c) For the avoidance of doubt GWCC may treat any breach of the warranties in this clause 5 by the supplier as a repudiation of the purchase order giving rise to the remedies specified in clause 6.
- (d) By agreeing to provide goods and/or services in accordance with this purchase order the supplier warrants that it complies with the *Fair Trading Act 1987 (NSW)* and the *Competition and Consumer Act 2010 (Cth)*, or their equivalents.

6. Defects (Acceptance and Rejection)

- (a) GWCC may at any time before acceptance, reject the goods or services if GWCC believes the goods or services are defective ('Defects') through errors, omissions, defects or other failures, do not comply with the warranties specified in clause 5 or do not meet the purchase order. After acceptance provision for rejection of goods or services remains the right of GWCC where the defect/s could not have been discovered prior to acceptance. GWCC prior to rejection may unpack, inspect and test the goods for this purpose.
- (b) If GWCC rejects the goods or services (or any part of them) the supplier must comply with a requirement of GWCC to:
 - (i) collect the defective goods and replace it or them at the supplier's expense; or
 - (ii) refund GWCC any amount paid for the defective goods or services.
- (c) The supplier represents and warrants that goods or services are free of defects or failures, should they arise where not in accordance with the contract, plans or renders for the service/s deeming them unsuitable for GWCC's requirements from the date of the contract determined by the purchase order issue date until the date that is 12 months after the completion of the service/s, classified as the agreed Defects Liability Period for this contract.
- (d) For resolution of defects prior to expiration of the defect's liability period, the supplier must comply with one or more of the following if notified by GWCC within the specific time the written notice (*if no time specified than within a reasonable time*).
 - (i) Refund the price if GWCC returns the product to the supplier.
 - (ii) Repair, modify, or replace at the suppliers cost any of the goods or services with defects.
 - (iii) Reimburse GWCC on request for all costs and expenses incurred by GWCC resulting from the defect/s.
- (e) If the supplier fails to correct or rectify any defect/s within the time required, GWCC may rectify the defect/s itself or by using a third party with any costs incurred considered a debt due and payable by the supplier to council.
- (f) These obligations in clause 9 survive termination (as per Clause 7) and expiry of this contract for compliance by the supplier, not preventing GWCC exercising its other rights and remedies under this contract or under the law. Warranties given by the supplier are given separately in addition to (and not instead of) the obligations of the supplier under this contract, including clause 9.
- (g) The parties expressly agree that the rights of GWCC pursuant to clause 6 above apply notwithstanding that the matters in clause 5 are described as warranties.

7. Cancellation and Termination

- (a) If the supplier is unable to supply the goods or services as specified, it must promptly notify GWCC, and if the goods or services are completely unavailable, the supplier may offer another good or service as a substitution. GWCC reserves the right to accept or reject the substitute goods or services in its absolute discretion.
- (b) The substitution of the goods or services must be approved by both parties in writing.
- (c) GWCC may (at any time before delivery), cancel or change the purchase order. If this occurs, and:
 - (iii) the change causes an increase or decrease in the cost of the goods or services, or time required to deliver the

goods or services, an equitable adjustment will be made appropriate to the circumstances.

- (iv) The supplier has already incurred any reasonable expense in satisfying the purchase order, GWCC will pay those expenses.
- (d) GWCC may terminate the contract with written notice should the supplier breach a term of the contract and fail to remedy the breach within 14 days of the receipt by it of a notice from GWCC specifying the breach and requiring the supplier remedy it.
- (e) Termination may result where the supplier is unable or unwilling to comply with its obligations under the contract or where the supplier becomes bankrupt, goes into liquidation (voluntary or compulsory) or has a receiver, administrator and/or agent appointed over all or any assets of the supplier.
- (f) In response to a finding of serious wrongdoing or other misconduct involving the supplier (or individual employed by the supplier) under this contract, termination of the contract may result with the supplier liable to GWCC for any loss whether direct, consequential, economic or otherwise suffered by GWCC.
- (g) GWCC may terminate the contract at any time by giving the supplier 28 days' written notice.

8. Dispute Resolution

- (a) If a dispute arises between the parties about this Contract (dispute) then the party who raises the dispute must tell the other party about the dispute in writing.
- (b) The parties must meet and take all reasonable steps to resolve such dispute by negotiation within 14 days of notice under clause 8 (a).
- (c) If the dispute is not resolved under clause 8 (b), then the dispute must be referred to mediation before the commencement of any legal proceedings about the dispute.
- (d) If there is a dispute, the parties must continue to perform their obligations under this contract.
- (e) Nothing in clause 8 prevents either party from seeking urgent interim or discretionary interlocutory relief which may be granted by a judge.

9. Price, Payment Terms, GST

- (a) The supplier must have an Australian Business Number (ABN). Subject to compliance with this contract and requirements of any laws, GWCC requests the supplier issue a tax invoice for the goods or services within 28 days from the date of the Tax Invoice.
- (b) The suppliers tax invoice(s) are to comply with and show all the details required by *A New Tax System (Goods and Services Tax) Act 1999*. The invoice must identify the services supplied under this contract, with clear and accurate itemised line items with the amounts payable for each item supplied in Australian Dollars.
- (c) If the supplier is not register for GST and is not required to be registered for GST, GWCC requests the supplier issue an invoice for the goods or services within 28 days from the date of this order.
- (d) The tax invoice(s) must identify the GWCC purchase order number. Each tax invoice must also include ABN and the name of the supplier that is recorded in the Australian Business Register for that ABN. Otherwise, PAYG Withholding (No ABN) law requires GWCC to withhold an amount from the payment and send it to the Australian Taxation Office.
- (e) GWCC will pay the supplier within the agreed terms of payment the supplier has on the submitted tax invoice; otherwise, standard payment terms will apply as 28 days from date of invoice.
- (f) If GWCC requests the supplier must provide a written statement in such form as is prescribed by law, to the effect that the supplier has met all obligations in respect of remuneration payable to its employees deployed by it carrying out the services for GWCC. This is inclusive of payroll tax in respect to payable wages and workers compensation premiums payable in respect of those employees.

10. Indemnity

- (a) The supplier indemnifies GWCC from, and against all actions, costs, claims, expenses and damages for all obligations and warranties under these conditions in respect of.
 - (i) Loss of or damage to any GWCC property, or damage of any kind suffered by GWCC including reputational damages.
 - (ii) Personal injury or death to any person or loss and/or damage to any third-party property arising out of or by

reason of any connection to a negligent or wilful act or omission by the supplier in the provision of the service. Each indemnity in this contract is a continuing obligation, separate and independent from other obligations of the parties and survives termination of this contract.

- (iii) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this contract.
- (iv) The parties agree that, to the extent permitted by law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) is excluded in relation to all rights, obligations or liabilities under this contract whether such rights, obligations, or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise at law or in equity.

11. General

- (a) The supplier must meet with and consult with council as required to ensure necessary and desired services are supplied in accordance with this contract. The supplier must take all steps necessary to clarify and confirm GWCC's requirements for the service/s.
- (b) The supplier must not assign the benefit of the purchase order without GWCC's prior written approval.
- (c) No variation of the purchase order will be binding on GWCC unless in writing and signed by a duly authorised representative of GWCC.
- (d) GWCC's failure or delay to enforce a condition, or to exercise a right or remedy for breach, is not a waiver of any other breach.
- (e) These conditions will be governed by the law of New South Wales and the parties submit to the jurisdiction in that state.

12. Insurance

The supplier must maintain the following policies of insurances and provide copies on first engagement by GWCC to deliver a service to or for GWCC, upon renewal of an expired insurance policy or by request.

- (a) Public Liability: Amount per occurrence shall not be less \$10,000,000 (AUD).
- (b) Product Liability (where applicable): Amount per occurrence shall not be less \$10,000,000 (AUD).

The insurances required by Clause 11 (a) and (b) must cover GWCC's and the supplier's respective rights, interests, and liabilities to third parties including the liability of the supplier to GWCC.

- (c) Professional Indemnity (where applicable) in providing any professional advice or professional services which must be maintained until 7 years following the earlier termination of this contract or the completion of the services: Amount per occurrence shall not be less than \$5,000,000 (AUD). The policy must include the provision for one automatic reinstatement of the sum insured.
- (d) Motor vehicle insurance for any vehicles used to provide the goods/services.
- (e) A workers compensation policy in accordance with applicable law.
- (f) An asbestos liability policy of insurance for an amount not less than \$20 million if the service comprises any asbestos decontamination work.
- (g) Any other insurance/s as are agreed between the parties in writing.

13. Work Health and Safety

- (a) In performing services for GWCC, the supplier must comply with all applicable legislation, laws and codes of practice relating to work health and safety, and all relevant Australian Standards.
- (b) The supplier must ensure that the services and their manner of supply does not put the health and safety of any person at risk.
- (c) If the supplier engaged under this contract is to sub-contract or let a component of the contract be delivered on their behalf through another supplier, they must ensure GWCC is notified prior and that Work Health and Safety is managed in accordance with this contract.
- (d) The supplier must comply promptly with all reasonable and lawful directions given by GWCC, concerning matters of health and safety.
- (e) Suppliers delivering a service for GWCC must ensure they have undertaken and completed associated documentation required to constitute compliance as a contractor induction as per the GWCC Work Health and Safety Management System. *This includes all*

workers for a supplier who will be conducting works or attending a GWCC premises, along with any suppliers, contractors or subcontractors engaged by the supplier this contract is with throughout the service delivery.

14. Intellectual Property

- (a) The supplier subject to clause 13(b) grants GWCC an irrevocable, non-exclusive, royalty free, perpetual licence to use and copy the Products so that Council can make full use of them anywhere in the world for any purpose.

The supplier agrees that GWCC owns the intellectual property in any modifications to the products made by GWCC.

- (b) Agreeing that all intellectual property rights in all products created by the supplier in the course of performing its obligations under this contract shall be the sole property of GWCC and the supplier hereby assigns to GWCC all such Intellectual Property.
- (c) Warrants that if the supplier engages a subcontractor to perform any of its obligations under this contract (or assist it to do so), the supplier has obtained a transfer of the intellectual property created by the subcontractor and warranties concerning intellectual property in the terms set out in this clause.
- (d) Warrants that in performing its obligations under this contract and in all submissions and proposals made by it to GWCC prior to this contract, the supplier (and any employee, agent, or subcontractor engaged by it) has not and will not infringe the intellectual property rights of any third party.
- (e) Warrants that use by GWCC of anything delivered by the supplier to GWCC in the course of performing its obligations under this contract will not infringe the intellectual property rights of any third party.
- (f) The supplier must, at its own expense, do all things and execute all documents (including further transfers and assignments) necessary to give full effect to clause 14.

15. Confidentiality, Publicity and Privacy

- (a) The supplier without prior written consent, must not:
- (i) disclose to a third party GWCC's confidential information without GWCC's prior written consent.
 - (ii) issue or publish any statement, information, press or media release concerning the subject matter of this contract.
- (b) The supplier must comply with all privacy laws, including any amendments made from time to time.

16. Government Information (Public Access) Act

In accordance with section 121 of the Government Information (Public Access) Act 2009 (NSW), the supplier agrees to provide GWCC with immediate access to the following information.

- (a) That relates directly to the delivery or performance of goods or services by the supplier.
- (b) Collected by the supplier from members of the public to whom it provides or offers to provide the services.
- (c) Received by the supplier from GWCC to enable providing the service/s.

17. Modern Slavery

- (a) The supplier must take reasonable steps (appropriate to their size and circumstance) to identify, assess, and address modern slavery risks within their operations and supply chains. Reasonable steps include the following.
- (i) Awareness and adherence to modern slavery labour laws and relevant legislation in Australia.
 - (ii) Currently undertaking activities to identify and address modern slavery risks in the supplier's operations and supply chain. This may include by conducting a risk assessment or developing and implementing relevant policy (or equivalent).
- (b) Where the supplier is required to comply with the Modern Slavery Act 2018 (Cth), a modern slavery statement must be prepared and forwarded to GWCC for each reporting period (as defined under the Modern Slavery Act 2018 (Cth)) that falls under the duration of this contract.
- (c) The supplier must notify GWCC in writing as soon as practicable possible of any modern slavery occurrence or human rights violations detected within their operations or supply chain. Detailing the remedial action taken, including actions to reduce the risk of future occurrence. Failure to notify and to take action to rectify the situation and prevent it from occurring again will result in termination of the contract.

18. Public Interest Disclosure (PID)

- (a) The supplier is engaged as an independent contractor and nothing in this contract constitutes the parties as a principal, agent, partners, joint venturers, employer or employee for GWCC and they must not represent to any person that they are. Nor does it give a party the authority to bind any other party in such ways.
- (b) In accordance with the Public Interest Disclosures Act 2022 (PID Act), the supplier must ensure that all individuals involved in providing services under this contract are made aware of processes under the PID Act.
- (c) The supplier must notify GWCC in writing as soon as practicable of a voluntary public interest disclosure of which the supplier becomes aware that the disclosure relates to GWCC or the maker of the disclosure is known to be a public official associated with GWCC.
- (d) The supplier must endeavour to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of GWCC or any other agency (as defined in the PID Act).
- (e) The supplier acknowledges GWCC has an obligation to take corrective action under section 66 of the PID Act, which may lead to terminate of the contract for serious wrongdoing or misconduct as per Clause 7 of this contract.
- (f) The supplier indemnifies GWCC in relation to any payment of compensation by GWCC under section 66 of the PID Act, arising from or in connection with any serious wrongdoing or other misconduct involving the supplier under this contract, (including for the supplier an individual providing services or a subcontractor).