

**NOTES:**

1. *These standard Terms and Conditions do not apply to a purchase or supply of goods or services which is pursuant to a specific written contract.*
2. *These standard Terms and Conditions will apply to the purchase or supply of goods or services by way of a Purchase Order only and override any supplier standard terms and conditions.*
3. *As much as possible these Terms and Conditions have been prepared in plain English. However if you need these explained, please speak with the WDC staff member providing you with the Purchase Order before accepting the Purchase Order.*
4. **New Suppliers:** *For Council to pay your invoice you must be set up as a Supplier in our system. To do this we need you to complete some paperwork and provide us with your verified bank account details and a bank deposit slip prior to accepting our Purchase Order. Contact the WDC staff member providing the Purchase Order to arrange this.*

*[These notes are for assistance only and do not form part of the Terms and Conditions.]*

**1. RELATIONSHIP**

- 1.1. The Council wishes to maintain a good relationship with its Suppliers so where any issues or concerns arise in relation to any PO WDC would like early notification to find a resolution to these.
- 1.2. The Council wants to receive regular updates on the job status as part of having a good relationship, and early warning of any issues.

**2. FORMATION OF CONTRACT**

- 2.1. These Terms and Conditions set out the terms and conditions applying to all purchases of Goods and/or Services by WDC where implied or referred to in a PO. These Terms and Conditions do not apply to the purchase by the Council of Goods and/or Services pursuant to a written contract. The PO shall be an offer which may be accepted by the Supplier. If the PO is not acceptable please advise Council as soon as possible. Delivery of Goods (in whole or part) or commencement of the provision of Services shall be deemed to be acceptance of the PO.
- 2.2. In the event of any inconsistency between the terms of the relevant PO and these Terms and Conditions, the terms of the relevant PO will prevail.
- 2.3. Where applicable the PO and these Terms and Conditions comprise the entire agreement of the parties in relation to the applicable supply of Goods and/or Services and supersede any previous discussions, arrangements and representations. Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Goods and/or Services (for example, the Supplier's standard purchase terms and conditions) will not apply.

**3. PURCHASE ORDER NUMBER**

- 3.1. The Supplier must obtain a valid PO Number from the Council before supplying Goods and/or Services.
- 3.2. Goods supplied without a valid PO Number may be returned at the Supplier's expense including the cost of packing, transporting, insuring and handling of the rejected Goods.
- 3.3. Packing slips, packing labels, invoices and correspondence should reference the PO Number.

**4. DELIVERY AND INSTALLATION OF GOODS**

- 4.1. The Supplier is responsible for the safe and undamaged Delivery of all Goods to the Council. All Goods supplied must be adequately packed and protected against damage and deterioration, at the Supplier's expense. Acknowledgement of receipt should be obtained at point of delivery.
- 4.2. Goods shall be Delivered to the Delivery Location in accordance with the Council's Delivery Instructions. If the PO does not identify Delivery Location the Supplier shall contact the Council to confirm the Delivery Location.
- 4.3. All Goods detailed in a PO should be delivered together, unless otherwise provided in the PO. Partial delivery may be made where approved by Council.
- 4.4. The Supplier must Deliver the Goods not later than the time(s) specified in the PO or, if no time is specified in the PO, within a reasonable time of the date of the PO. Suppliers becoming aware of any delay in Delivery should notify Council as early as possible. The Council reserves the right to void or cancel the PO if Goods are not delivered within the specified time frame or any extended timeframe as approved by the Council.
- 4.5. The Supplier is responsible for the removal and disposal of all packing containers and materials.
- 4.6. If an emergency or disaster occurs, the Supplier will use its best endeavours to provide or delay Delivery as requested by the Council.
- 4.7. Where required by the PO the Supplier will install the Goods at the Delivery Location in accordance with the Installation Instructions, all applicable industry and good practice standards, all statutory and regulatory requirements and with due care and skill. Delivery and installation shall be carried out using sufficient appropriately trained, qualified, experienced and supervised persons.
- 4.8. The Supplier shall deliver and install the Equipment in accordance with all reasonable Council instructions.
- 4.9. The Supplier shall provide all standard manufacturer or supplier warranties and guarantees relating to the Goods to the Council.
- 4.10. Where any Goods include software (installed or otherwise), the Supplier will transfer or assign all applicable software licenses required for the use of the software as part of the Delivery of the Goods.

**5. QUALITY OF GOODS**

5.1. All Goods supplied are to be fit for purpose, new (unless specified otherwise) and comply with all statutory and regulatory requirements, industry standards and the specification or description set out in the PO.

**6. ACCEPTANCE AND TITLE OF GOODS**

6.1. Goods shall be Accepted by the Council on completion of Delivery and (where applicable) installation and on the Council being satisfied that the Goods are to specification and, where the Supplier is responsible for installation, are correctly installed and functioning.

6.2. Property in the Goods and risk passes to the Council on Delivery to and Acceptance by the Council.

6.3. Property in the Goods passes to the Council free of any prior interest or encumbrance.

6.4. The Supplier warrants it has the right to sell the Goods.

**7. REJECTION OF GOODS**

7.1. The Council may reject any Goods that are:

- (a) not new or of inferior quality;
- (b) contrary to the specifications for the Goods; or
- (c) in an unsatisfactory condition or not functioning in the way they are designed to function.

7.2. Goods may be rejected under clause 7.1 up to 10 Working Days after Acceptance.

7.3. Council will promptly notify the Supplier as to any Goods rejected under this clause 7.

**8. DEFECTS IN GOODS**

8.1. The Council may notify the Supplier as to defective Goods identified by the Council within any defects notification period identified in the PO following Acceptance of the Goods or if no defects notification period is identified, within three months of Acceptance.

8.2. Where the Goods are placed in store pending installation or use, the defects notification period identified in clause 8.1 shall follow the date the Goods item is installed or put into service.

8.3. Such defective Goods notified shall be promptly replaced or repaired by the Supplier as elected by the Council.

8.4. Where replacement or repair is not practicable the Supplier will, at the Council's option, make a prompt full refund of the price of the defective Goods to the Council.

**9. UPLIFT OF REJECTED OR DEFECTIVE GOODS**

9.1. The Supplier will, if required by the Council, uplift rejected or defective Goods at its risk and cost.

**10. PROVISION OF SERVICES**

10.1. Services provided by the Supplier shall be provided:

- (a) in accordance with the requirements set out in the PO;
- (b) to the standard and/or quality set out in the PO and otherwise in accordance with applicable industry standards and best practice and all statutory and regulatory requirements;
- (c) with reasonable care, diligence and skill and performed by persons with the requisite skill and experience; and
- (d) in accordance with the programme, timeframes and completion dates (however described) set out in the PO.

**11. APPROVALS AND CONSENTS**

11.1. Other than as set out in the applicable PO the Supplier must obtain every necessary and prudent authorisation, approval and consent required to ensure that the Council can at all times enjoy the full benefits of the Goods and/or Service.

**12. PRICE, YOUR INVOICE AND OUR PAYMENT**

12.1. The Council will pay the price for the Goods or Services set out or determined in accordance with the PO.

12.2. Prices or rates set out in a PO are in NZ dollars and unless indicated otherwise are inclusive of GST import or other duty, freight, insurance and any other charges or taxes.

12.3. The Supplier shall invoice Council after Delivery and Acceptance of the applicable Goods and Services.

12.4. Council's preference is that invoices are emailed to [invoices@waipadc.govt.nz](mailto:invoices@waipadc.govt.nz) but invoices may be mailed to:

Accounts Payable  
Waipa District Council  
Private Bag 2402  
Te Awamutu 3840.

12.5. In order for Council to pay your invoice it must be a Tax Invoice that meets IRD requirements and must:

- be typewritten (either computer generated or typed), and must not be handwritten;
- include the Supplier's GST number and any other information for a valid tax invoice (if applicable);
- include the relevant PO Number;
- include a description of the Goods and/or Services supplied and any relevant dates of Delivery;
- show the total payable by the Council, with details of how this amount has been derived; and
- be addressed to the Council.

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- 12.6. Council's method of payment is direct credit by electronic transfer. To support this before accepting the PO you must provide us with your bank account details and a deposit slip.
- 12.7. The Supplier shall promptly supply all supporting information or clarification in relation to any invoice requested by the Council. Payment may be withheld by Council if such supporting information or clarification is not promptly provided.
- 12.8. Tax Invoices received by the 5th working day of the month will be paid to the Supplier, less any disputed amounts or amounts requiring supporting information or clarification, by the 20th day of that month. Council will not be liable for late interest payments if payment is delayed for any reason.
- 12.9. We encourage Suppliers to use monthly invoicing on POs rather than invoicing on individual items under the same PONumber.
- 12.10. Your invoice should show a breakdown of all Goods, Services and any associated labour, materials and mileage charges (if applicable).
- 12.11. Unless we have agreed to progress payments, invoices for part orders will not be accepted or paid.
- 12.12. Where applicable Council shall deduct:
- (a) Withholding Tax (Schedular Payments); and
  - (b) Non-resident Withholding Tax
- in accordance with the Income Tax Act 2007, unless the Supplier provides valid Certificate of Exemption.
- 12.13. Any invoices that do not quote a PO Number will be returned to the Supplier for inclusion of the PO Number and re-issue.

### 13. WARRANTIES

- 13.1. The Supplier shall provide the warranties and guarantees in relation to Goods and/or Services provided as set out in the applicable PO.
- 13.2. In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to Council that:
- (a) the Goods are (unless specified otherwise in the PO) new, in good order and merchantable condition and are fit for the purpose for which they are intended as stated in any product specification or requirements set out in the PO or provided by the Council or otherwise as held out by the Supplier;
  - (b) the Goods comply with all applicable product standards and regulatory or other statutory requirements;
  - (c) the Goods and/or Services will comply with any specifications supplied by the Council or agreed between the parties, will be fit for any purpose that Council makes known to the Supplier and will comply with all applicable legislation, regulations, standards and codes of practice;
  - (d) the Goods have been designed and manufactured so as to be safe for use;
  - (e) at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance;
  - (f) the Supplier has all Intellectual Property rights relating to the Goods and/or Services required for the Goods and/or Services to be provided to Council and neither the Goods and/or Services, nor the provision or use of the Goods and/or Services by Council will breach any Intellectual Property rights of any third party; and
  - (g) The Supplier will provide all manufacturer and distributor warranties and guarantees provided by the manufacturer or distributor for Goods supplied to the Council.
- 13.3. The Supplier's liability under the warranties as set out in clause 13.2 shall apply to all claims made by the Council within the periods set out in the applicable PO and if no such period is specified within 12 months of the Acceptance of the Goods or satisfactory completion of the provision of the Services.

### 14. HEALTH & SAFETY

- 14.1. The Supplier shall, in the delivery and installation of the Goods and/or the provision of the Services, comply with its obligations under the HSW Act, all regulations made under the HSW Act and all approved codes of practice under the HSW Act.
- 14.2. Where the Supplier has sole possession of a Site the Supplier shall, for the purposes of s.37(1) and s.38(1) of the HSW Act, be the PCBU who manages or controls the Site and the fixtures, fittings and plant on the Site.
- 14.3. Where indicated in the PO, the Supplier shall provide its contract specific health and safety plan to the Council prior to commencing the delivery and installation of the Goods and/or the provision of the Services. The safety plan shall cover all aspects of the management of health and safety in relation to the delivery and installation of the Goods and/or the provision of the Services including (without limitation) the coordination of health and safety management with all other separate contractors on Site and with all subcontractors and suppliers when their personnel are on Site.
- 14.4. The Supplier will also comply with all Council health and safety policies and procedures set out in the applicable PO or notified by the Council. This includes ensuring that only personnel of the Supplier that have a My Vaccine Pass, as issued by the Ministry of Health, enter any Council-managed building as part of providing the Goods or Services. The Supplier must ensure that such personnel are able to provide evidence of their My Vaccine Pass on request.
- 14.5. Where applicable the Supplier will consult with each other party that has duties as a PCBU in relation to the Site and the delivery and installation of the Goods and/or the provision of the Services.
- 14.6. The Council may require the Supplier to cease the delivery and installation of the Goods and/or the provision of the Services (or any part of the Services) where in the Council's reasonable view the continued carrying out of such would (or be likely to) constitute a breach of the HSW Act, the health and safety provisions in this Contract or be a danger to persons or property.
- 14.7. Suppliers undertaking physical works in connection with the installation of Goods or provision of Services must be registered with WDC's Health & Safety Pre-qualification provider.
- 14.8. Suppliers must provide all health and safety information in relation to the installation and use of Goods supplied to the Council as part of the Delivery of the Goods. Without limiting this, such information should include installation, handling or operating procedures, personal protective equipment to be used, emergency procedures and required or recommended training that staff should undertake.
- 14.9. Suppliers attending on or carrying out work on premises controlled by the Council must ensure their personnel report to reception or site office and sign in prior to the commencement of any work. On completion of the work, the Contractor must sign out at reception or site office. Such personnel will need to have photo Identification.

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- 14.10. Where any physical work is involved, the Supplier must ensure its personnel:
- a. promptly and properly complete the work and minimise disruption to other persons on the Site;
  - b. tidy up those areas accessed during the work, and promptly make good any damage or problems caused; and
  - c. remove all tools and property. (Council may dispose of left behind items at the Supplier's cost).
- 15. PROTOCOLS, POLICIES AND CODES OF CONDUCT**
- 15.1. The Supplier shall ensure all Supplier personnel comply with all Council procedures policies and codes of conduct as notified by the Council when accessing or working on any premises controlled by the Council. Where no procedures, policies or codes of conduct are notified the Supplier shall ensure its personnel have due regard for the Council's premises, employees and other persons on the premises.
- 15.2. The Supplier must comply with the Council's *Supplier Code of Conduct*, as published on the Council's website ([www.waipadc.govt.nz](http://www.waipadc.govt.nz)).
- 16. INTELLECTUAL PROPERTY**
- 16.1. All Intellectual Property owned by either party and existing prior to the commencement of the Delivery and installation of Goods and/or Services will remain the exclusive property of that party.
- 16.2. The Supplier agrees that, unless specified otherwise in the PO, all new Intellectual Property that arises or is created by the Supplier or any of the Supplier's employees, subcontractors or agents in the course of supplying the Goods and/or Services will be Council's exclusive property.
- 16.3. The Supplier grants to Council a perpetual, royalty free, non-exclusive licence to use all Intellectual Property owned by the Supplier under clause 16.1 that is required for the effective use the Goods and/or Services provided by the Supplier.
- 17. LIABILITY, INDEMNITY AND INSURANCE**
- 17.1. The Supplier shall at all times indemnify the Council in respect of any liabilities, losses, damage or expense suffered or incurred by the Council as a direct or indirect consequence of:
- (a) any act, error or omission by the Supplier and for which the Supplier legally liable; or
  - (b) any breach by the Supplier of any warranty or other obligation under a Contract.
- 17.2. The indemnity shall survive the termination of the Contract.
- 17.3. The Supplier shall, at all relevant times in relation to the supply of Goods or the provision of Services, have the following insurances:
- (a) Public Liability Insurance for a minimum value of \$2,000,000.00.
  - (b) Insurance covering the Supplier's own property, equipment, materials owned, hired or leased, or used by the Supplier for the purpose of the PO.
  - (c) Any other insurance specified in the PO or required by law.
  - (d) Freight insurance covering Goods during transportation and Delivery for any damage or loss and for the period up until Acceptance of the Goods.
  - (e) For all Services in the nature of Professional Services, Professional Indemnity insurance for not less than the amount set out in the applicable PO and if no such amount is specified for not less than \$2,000,000.00. The professional indemnity insurance shall be held for a period of 6 years from completion of the Services.
- 18. CONFIDENTIALITY**
- 18.1. All Confidential Information will be and will remain the property of Council.
- 18.2. The Supplier must:
- (a) keep all Confidential Information confidential and use the Confidential Information only for the purpose of the PO;
  - (b) not disclose any Confidential Information to any person without the prior written consent of Council (unless the disclosure is required under law); and
  - (c) destroy or return the Confidential Information to Council upon Council's request at any time, provided that the Supplier may disclose Confidential Information to its employees, subcontractors and advisers to the extent necessary for the purposes of the PO. The Supplier will ensure that its employees, subcontractors and advisers will comply with these obligations of confidentiality.
- 18.3. The Supplier will not use Council's name in advertising its business or activities without the prior written consent of Council, and will comply with all reasonable terms and conditions upon which such permission may be given.
- 18.4. This clause 18 survives termination and expiry of the applicable Contract.
- 19. DEFAULT AND TERMINATION**
- 19.1. If the Supplier does not supply or Deliver Goods and/or Services in accordance with the applicable Contract, then, at the sole option of the Council, and without prejudice to any other remedy or right of the Council under the Contract or at law, Council may:
- (a) if the breach relates to Goods, reject the Goods in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense including the cost of packing, transporting, insuring and handling the rejected Goods and the Supplier must immediately reimburse Council for any monies paid in respect of the returned Goods; or
  - (b) if the breach relates to Goods, require the Supplier to replace, repair, reinstate or re-supply the Goods at the Supplier's expense so that they conform to the Contract or may have the Goods replaced, repaired or re-supplied by another person and recover the cost of doing so from the Supplier; or
  - (c) if the breach relates to Services, require the Supplier to perform the Services again to the required standard at the Supplier's expense or may have the Services provided by another person and recover the cost of doing so from the Supplier; or
  - (d) if the breach relates to health and safety obligations of the Supplier, immediately terminate (or suspend Supplier's performance of) the Contract in whole or in part by written notice to Supplier; and/or

- (e) suspend payment for the Goods and/or Services until the breach has been remedied to Council's reasonable satisfaction.
- 19.2. Any Supplier costs or delay arising from a suspension pursuant to this clause shall be the responsibility of the Supplier.
- 19.3. Either the Council or the Supplier may terminate a Contract immediately by notice in writing if the other party commits any material breach of the Contract and fails to remedy the breach within 15 Working Days of receiving written notice of such breach. (Such notice must specify it is given under this clause and that termination may follow if the breach is not remedied).
- 19.4. The Council may immediately terminate a Contract, by giving written notice of termination to the Supplier, if any of the following events occur:
- (a) the Supplier has a petition presented or an order made or an effective resolution passed or analogous proceedings taken for its bankruptcy, liquidation, dissolution or winding up (except for the purposes of solvent reconstruction);
  - (b) the Supplier has an encumbrancer, receiver, liquidator, trustee or similar officer take possession of or be appointed with respect to all or any part of its business, assets, or undertakings;
  - (c) the Supplier abandons or repudiates the Contract.
  - (d) The Supplier fails to deliver the Goods within ten Working Days of the Delivery Date; or
  - (e) The Goods or Services or a material portion of the Goods or Services are defective.
- 19.5. No failure or delay on the part of Council to exercise any of its rights in respect of any default by the Supplier will prejudice Council's rights in connection with that default or any subsequent default.
- 19.6. Termination of a Contract and/or cancellation of a PO does not affect any responsibilities which are intended to continue or come into effect after the Contract terminates.
- 20. Notices**
- 20.1. Any notice to be given under a Contract must be in writing and may be served personally, sent by email or other electronic method or sent by registered mail to the usual business address of the party.
- 20.2. All notices or communications shall be deemed to have been duly given or made:
- (a) in person is deemed served upon delivery;
  - (b) by email or other electronic method is deemed to be served at the time the communication enters the recipients system;
  - (c) by registered mail is deemed to be served three Working Days after the date of posting.
- 20.3. Any such notice which has been served after 5.00pm or on a non-Working Day is deemed served on the first Working Day after that day.

**21. GENERAL**

- 21.1. The illegality, invalidity or unenforceability of any provision in these Terms and Conditions will not affect the legality, validity or enforceability of any other provisions.
- 21.2. No right under a Contract shall be deemed to be waived except by notice in writing signed by the party providing the waiver.
- 21.3. A waiver by either party will not prejudice its rights in respect of any subsequent breach of a Contract by the other party.
- 21.4. Any failure by either party to enforce any clause of a Contract, or any forbearance, delay or indulgence granted by a party will not be construed as a waiver of that party's rights under the Contract.
- 21.5. The Supplier is an independent contractor to the Council. No legal partnership, principal/agent or joint venture relationship between the parties is created or evidenced by a PO.
- 21.6. The Supplier shall not subcontract all or any material part of its obligations under a PO without the Council's prior written approval.
- 21.7. The Council may and is hereby authorised by the Supplier to deduct any moneys payable by the Supplier to the Council from any moneys payable by the Council to the Supplier under a PO.
- 21.8. Each Contract will be governed by and construed according to the law of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

**22. Definitions**

- 22.1. In these terms and conditions:

**Accepted and Acceptance** means the acceptance of the Goods by the Council in accordance with clause 6.1.

**Confidential Information** includes the terms of the PO and all information provided by the Council in relation to any PO which is identified by Council as being confidential and information that would reasonably be considered to be confidential, except information that is public knowledge.

**Contract** means the contract between the Council and the Supplier arising pursuant to a PO.

**Delivery** means, in the case of Goods, the delivery of the Goods to the Delivery Location nominated by Council and in relation to Services the completion of the provision of the Services and in both cases 'Deliver' has a corresponding meaning.

**Delivery Date** means the date specified in the PO for delivery of the Goods and/or Services.

**Delivery Instructions** means the Delivery Instructions set out in the applicable PO or subsequently notified by the Council.

**Delivery Location** means the location to which the Goods are to be delivered as set out in the applicable PO.

**Goods** means all goods, materials, equipment, parts, operations manuals specified in a PO.

**GST** means the goods and services tax in terms of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

**HSW Act** means the Health and Safety at Work Act 2015.

**Installation Instructions** means the installation instructions in relation to Goods set out in the applicable PO.

**Intellectual Property** means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and, without limitation, includes inventions, discoveries and novel designs, whether or not registered or registerable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright may subsist now or in the future; confidential information, trade secrets and trademarks, including service marks and trading names (whether registered or unregistered).

**Price** means the price of the Goods or Services agreed by WDC and the Supplier and specified in the PO. Unless otherwise agreed in writing, all Prices are inclusive of all costs of manufacture, delivery, packaging and transportation, insurance and all applicable taxes (including GST).

**PO** means a purchase order issued by the Council for the supply of Goods or Services by the Supplier and includes any addenda or attachment issued with or attached to the PO form.

**PO Number** means the PO Number set out in a PO.

**Services** means all the services to be provided by the Supplier to WDC as specified in a PO.

**Site** means the area at the Delivery Location made available to the Supplier for the purposes of carrying out the Installation of Goods or provision of Services.

**Supplier** means the person to supply the Goods or provide the Services as identified in a PO.

**Tax Invoice** means an invoice provided by the Supplier to WDC pursuant to the Goods and Services Tax Act 1985 which meets IRD requirements.

**Terms and Conditions** mean these WDC Standard Purchase Order Terms and Conditions.

**WDC or 'the Council'** means the Waipa District Council.

**Working Day** means any day other than a Saturday, Sunday or a public holiday in Waikato.

### **23. Interpretation**

- 23.1. References to any party means includes their respective successors and permitted assignees (as the case maybe).
- 23.2. Where the context permits references to the Supplier include the Supplier's employees, agents and officers.
- 23.3. All references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation.
- 23.4. References to a person include a natural person, firm, corporation, association or other entity whether incorporated or not and whether or not having a separate legal personality.
- 23.5. Obligations that bind more than one person shall bind those persons jointly and severally.
- 23.6. Defined expressions are signified by capitalisation.
- 23.7. The headings in these Terms and Conditions shall not be used in its interpretation.