

STANDARD CONDITIONS OF PURCHASE

To be read in conjunction with Palmerston North City Council Purchase Order

Standard Conditions of Purchase

Palmerston North City Council (PNCC) and the party addressed in PNCC's purchase order (the Supplier) have agreed to enter into and be bound by the following standard conditions of purchase (the Conditions) to define each party's obligations where the Supplier provides goods or materials (the goods) to PNCC and / or carry out services for PNCC (the Service) in accordance with a purchase or print order, or any order document which is stated to be subject to these Conditions (the Purchase Order).

1. ACCEPTANCE OF CONDITIONS:

1.1 Supplier shall provide the goods and / or services to PNCC in accordance with each respective Purchase Order issued by PNCC and accepted by the Supplier which shall be subject to these Conditions. The receipt by PNCC of any terms and conditions, quotation form, sales confirmation or other proposal from the Supplier shall not, in the absence of a written acknowledgement by PNCC expressly agreeing to same, have the effect of changing in any manner or adding to the terms and conditions hereof.

1.2 PNCC may enter into a Purchase Order for itself or as agent for and on behalf of one or more of its related Council Controlled Organisations (CCO). PNCC reserves the right to make changes to the specification or other requirements of the Purchase Order, but no variation to the contractual terms will be allowed unless expressly authorised in writing by PNCC. If a change affects the time for performance, specification, delivery or the amount payable by PNCC, the Supplier shall notify PNCC immediately and the parties shall negotiate an adjustment. The Supplier shall continue to supply the goods and / or services during such negotiations.

1.3 The Supplier shall be deemed to have accepted these terms and conditions in respect of any goods or services it provides to PNCC or PNCC's related CCO upon the earlier to occur of acceptance of the Purchase Order, or commencement of delivery or provision of any part of such goods and / or services.

2. PRICE AND PAYMENT:

2.1 Payment shall be made within 31 days of the end of the calendar month in which the relevant invoice was dated and is received by PNCC (or as otherwise specified in the Purchase Order). The invoice must be supplied in a manner acceptable to PNCC (see 2.3). Payment shall be made provided that if any invoice submitted by the Supplier is disputed, PNCC will notify the Supplier of the reasons for that dispute but will otherwise pay that part of the invoice which is not disputed. Any disputed amount will be resolved in accordance with paragraph 15; unless otherwise agreed in writing with PNCC.

2.2 Unless otherwise specified in a Purchase Order, delivery of goods and all prices shall be regarded as DDP (Delivered Duty Paid) (Incoterms 2020) and inclusive of all expenses, taxes, duties and charges that PNCC has agreed to pay pursuant to paragraph 6. Any expenses, taxes, duties and charges agreed to be paid by PNCC in respect of goods and / or services, the subject of a Purchase Order, shall be separately itemised on the Supplier's invoice but included in the total price.

2.3 All invoices for goods and / or services shall be supplied electronically to accounts@pncc.govt.nz or a pre-agreed PNCC email address, each invoice must be separately attached with only one invoice per attached file. Failure to do so will delay payment beyond requirements of 2.1 and/or generate an auto return to supplier of invoices to request corrections. PNCC will not accept physical invoice delivery along with goods as a valid path and an electronic version is to be supplied to initiate payment.

2.4 All invoices must clearly contain the PNCC order number for the goods and / or services provided and suppliers must provide a separate invoice for each / or part purchase order. Failure to do so will delay payment beyond requirements of 2.1 and/or generate an auto return to supplier of invoices to request corrections. PNCC will not accept multiple purchase orders on a single invoice.

2.5 PNCC reserves the right to pay by electronic means.

3. INSPECTION:

PNCC shall not be deemed to have accepted the goods and /or services unless and until it has had a reasonable opportunity to examine them for the purpose of ascertaining that they conform with the Purchase Order, notwithstanding any agreement by PNCC to collect them or pay for their transport costs. Following PNCC's inspection of and /or services, PNCC may reject any and /or services which do not comply with the Purchase Order or which contain defective material or workmanship irrespective of date of payment. PNCC may hold goods pending

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Supplier's instructions relating to any goods and /or services so rejected or may return them to Supplier at Supplier's expense.

4. PERFORMANCE OF SERVICE AND SUPPLY OF GOODS:

4.1 In providing the goods and / or services, the Supplier, will use its best endeavours not to interfere with any of the activities conducted by PNCC or any other person at any delivery location.

4.2 The Supplier will deliver the goods and / or services to PNCC within the Delivery Schedule at the relevant Location set out in the Purchase Order or otherwise agreed by the PNCC in writing (if any).

4.3 Supplier warrants that all goods and/or services ordered pursuant to a Purchase Order and according to plans, drawings specifications or sample furnished or approved by PNCC (which are hereby made a part of the Purchase Order as if fully set out herein) will conform thereto, or if not so ordered will be merchantable, fit and sufficient for the purpose ordered and will be in good condition, free from defect in material and servicemanship. All Supplier's warranties shall, as applicable, run to PNCC, its related CCO, its and their successors, assigns and customers and shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

4.4 The Supplier shall, and shall ensure that the Supplier's employees, officers, agents, suppliers and sub-contractors shall:

- (a) perform the service with due care, skill and diligence and in a timely and professional manner;
- (b) provide PNCC with such information, and prepare such reports, in relation to the goods and / or services as PNCC may reasonably require;
- (c) give priority to PNCC's requirements;
- (d) at its own cost, make good any errors or omissions in the goods and / or services of which PNCC notifies the Supplier in writing during the term of the agreement;
- (e) comply with all applicable laws, regulations and agreements;
- (f) comply with all applicable safety, health and environment guidelines, rules and procedures;
- (g) comply with all obligations under the Health and Safety at Service Act 2015;
- (h) comply with all such policies, guidelines, rules and procedures provided by PNCC;
- (i) comply with all reasonable access, security and identification requirements and procedures specified by PNCC;
- (j) comply with all other reasonable directions and orders given by PNCC's representatives; and
- (k) ensure that the delivery locations are left secure, clean, orderly and fit for use by PNCC.

4.5 All services performed, and materials used in connection therewith shall be at the risk and expense of the Supplier and shall be repaired or replaced by Supplier in the event of any damage or destruction thereof prior to delivery to and acceptance by PNCC.

4.6 If a Purchase Order requires a service to be performed by Supplier upon any PNCC premises owned or controlled by PNCC and/or PNCC's customers, Supplier will comply with all health and safety and other requirements at the premises, keep the premises and the service and goods free and clear of all liens and will furnish PNCC with certificates and waivers as required or provided by law or for PNCC's insurance purposes. Whenever any property belonging to PNCC or its customer is in the possession of Supplier or Supplier's suppliers, Supplier shall be deemed the insurer thereof and shall be responsible for its safe return to PNCC. Title to PNCC supplied equipment will at all times remain in PNCC and the Supplier shall ensure that the equipment carries PNCC identification tags at all times.

5. DELIVERY:

5.1 Delivery shall mean the delivery of possession of the goods being delivered to PNCC at the place and between the hours indicated by PNCC on the Purchase Order and the transfer by Supplier to PNCC of its right, title and interest in and to the goods which Supplier possesses, free and clear of all liens. If no time for delivery is stipulated

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the Supplier shall deliver the goods or completed service within a reasonable period of receiving the Purchase Order and within the hours of 9am and 5pm on a working day (local time of PNCC at the delivery location).

5.2 PNCC shall not be bound to accept delivery prior to the date of delivery specified and will not be liable for any loss or charge arising from its refusal to accept such delivery prior to the appointed delivery date. Upon delivery of the goods to PNCC at the delivery location, title to as described below, and risk of accidental loss of or damage to such goods and exclusive care, custody and control thereof, will pass to PNCC.

6. PAYMENT OF TAXES AND DUTIES:

PNCC will pay all taxes, charges and duties properly imposed on PNCC by or on behalf of the Government of New Zealand in respect of the supply of the goods and / or services, other than those levied on the net income of the Supplier. The Supplier will pay all taxes, charges and duties imposed by or on behalf of any government or country other than the Government of New Zealand. Unless specifically stated to the contrary in the Purchase Order or in any written notification by PNCC to Supplier, the goods and / or services which are the subject of the Purchase Order may be for export to PNCC in New Zealand as the final destination and, if so, will be exempt from Sales and Goods and Services Tax. At the request of Supplier, PNCC will furnish documentary evidence of such exemption.

7. INTELLECTUAL PROPERTY:

7.1 Supplier warrants that the goods and/or services furnished hereunder, and the use by PNCC and / or its associated CCO, contemplated by this Agreement, does not and will not infringe any intellectual property rights of a third party. Supplier will at its own expense defend any suit that may arise in respect thereto.

7.2 All intellectual property rights created by or on behalf of the Supplier for PNCC or arising out of the provision of the service are assigned by the Supplier to PNCC upon their creation.

8. EXCUSABLE DELAY:

No liability shall result from delay in performance or from non-performance under these terms and conditions caused by circumstances beyond the reasonable control of the party affected (including, but not limited to acts of God, fire, flood, war, sabotage, accident, Government act, order or regulation and global inability (other than as a result of inadequate forward planning processes) to obtain material, goods or equipment or transportation) which interfere with production. PNCC deliveries delayed or not made because of such cause or event may be suspended, reduced or eliminated by PNCC from the Purchase Order without charge.

9. INSURANCE:

From the date these Terms are accepted by the Supplier until at least 3 years after Delivery of the relevant Goods and/or Services, the Supplier must maintain insurance coverage in amounts and against risks that are normal for businesses similar to that of the Supplier, including, where applicable, professional indemnity insurance and insurance against public liability and property damage. The Supplier is required to provide evidence of insurances in the form of a validated certificate of insurance on request.

10. INDEMNITY:

The Supplier indemnifies and shall keep indemnified PNCC, its successors and assigns, its related CCO, its and their officers, agents, subcontractors and employees from and against any and all claims, proceedings, costs, expenses, damages and losses arising out of or in any way connected with or related to a Purchase Order these Conditions or the goods provided or to be provided by or the service performed or to be performed by or on behalf of the Supplier and relating to:

- (a) any loss or damage to property (whether real or personal);
- (b) injury to any person including injury resulting in death;
- (c) any defect in the goods and / or services performed or their delivery or unloading by the Supplier or the supplier's delivery agent/contractor;
- (d) any infringement of a third party's intellectual property rights; and
- (e) the failure of the Supplier its employees agents or sub-contractors to comply with the safety, health, and environment guidelines, rules or procedures provided to the Supplier by PNCC whilst at the PNCC locations; except

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to the extent caused by the negligence or wilful misconduct of PNCC, its related CCO and its and their officers, agents, subcontractors or employees.

11. NON PERFORMANCE:

The failure of any goods and/or services delivered or performed hereunder to meet the quality specified in the Purchase Order or, except to the extent provided in Paragraph 4.3, the failure of the Supplier to make any delivery in the quantity or within the time specified or to comply with any of these Conditions shall relieve PNCC of any obligation to accept and pay for such goods and /or services performed. PNCC may either terminate the relevant Purchase Order without charge or all or any part of the undelivered portion of the Purchase Order and place a Purchase Order elsewhere for an equal or lesser quantity of goods and/or services of the same or substantially equal quality and charge Supplier with any loss so incurred. Any failure of PNCC to exercise such option with respect to any portion of the Purchase Order shall not constitute a waiver with respect to any undelivered instalments or waiver by PNCC of any specific defaults by Supplier. Failure by PNCC to cancel the Purchase Order or any part thereof when a right of cancellation pursuant to this paragraph 11 arises shall not constitute waiver by PNCC of any of the terms and conditions of any Purchase Order with respect to any further or subsequent default by Supplier which give rise to right of termination.

12. TERMINATION:

12.1 In addition to its rights in paragraph 11, PNCC may by notice in writing to the Supplier terminate a Purchase Order in whole or in part if the Supplier is otherwise in breach of that Purchase Order and has failed to remedy the breach (where such breach is capable of remedy) within 10 working days of receipt of a request in writing from PNCC to remedy the breach, such request indicating that failure to remedy the breach may result in termination of the Purchase Order.

12.2 PNCC may terminate a Purchase Order without cause by giving Supplier 7 days written notice to that effect. In that case only, PNCC shall pay to Supplier: (i) for such of the goods and/ or services completed prior to notice of termination and, if being shipped, it has been scheduled for shipment within thirty days immediately following the date of giving of such notice; (ii) for such of the goods and/ or services only partially completed prior to notice of termination and, if being shipped, scheduled for shipment within ninety days following the date of giving of such notice, the Supplier's verifiable and reasonable cost of labour and material used to construct or work on such partially completed goods, and / or services together with reasonable and proportionate overhead charges; (iii) for material, not in process, which before the giving of notice of termination the Supplier has purchased or agreed to purchase, the cost of such material to PNCC. Such payments made under this provision shall be subject to the Supplier using its best endeavours to minimise its financial loss by reworking or otherwise utilising completed goods, partially completed goods and raw materials, disposing of the same at the best price reasonable obtainable therefore, and/or discontinuing service. The total of such claim shall not, however, exceed the commitment value of the terminated Purchase Order.

13. NON-ASSIGNABILITY:

No Purchase Orders nor any monies due or to become due thereunder may be assigned by Supplier without the written consent of PNCC.

14. CONFIDENTIALITY:

The Supplier and its staff must not, without PNCC's prior written consent, disclose to any person (other than a person authorised by PNCC or as may be required by law) any information whatsoever acquired by the Supplier in connection with a Purchase Order or these Conditions, nor advertise or publicly announce that it is supplying goods or undertaking services for PNCC.

15. DISPUTE RESOLUTION:

Subject to paragraph 17, either party may require any dispute between the parties arising out of or connected to a Purchase Order (Dispute), which has not been resolved within 14 days, to be referred to the senior management of the respective parties (such personnel to have authority to settle such Dispute).

16. ENTIRETY:

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These Conditions and the Purchase Order constitute the entire agreement between the parties in relation to the goods and / or services contracted under the Purchase Order and no modifications thereof shall be binding unless mutually agreed to in writing.

17. JURISDICTION AND GOVERNING LAW: The parties accept the non-exclusive jurisdiction of the New Zealand Courts and agree that these Conditions and each Purchase Order shall be governed by and construed in accordance with New Zealand law.