



NELSON CITY COUNCIL PURCHASE ORDER TERMS AND CONDITIONS

20 June 2023

*These terms & conditions apply to all Purchase Orders issued by the Council on or after
20 June 2023 until further notice.*

1. Formation of Contract

1.1 Subject to clause 1.2, these Terms and Conditions set out the terms and conditions applying to all purchases of Goods and/or Services by Council where:

- (a) these Terms and Conditions are referred to in the applicable Order; and
- (b) the applicable Order is silent as to the applicable contract terms.

1.2 For the avoidance of any doubt, these Terms and Conditions do not apply to the purchase by the Council of Goods and/or Services from the Supplier pursuant to a separate written contract, notwithstanding the fact that a relevant purchase order from the Council might still reference these Terms and Conditions. In this instance, the terms and conditions set out in the separate written contract will apply to that purchase.

1.3 Subject to clause 1.2, a contract for the sale and purchase of Goods and/or Services will arise on the Supplier's acceptance of an Order (whether by written acknowledgement or by Delivery or Service Commencement). The Contract will comprise:

- (a) the Order; and
- (b) these Terms and Conditions.

1.4 In the event of any inconsistency between the terms of the relevant Order and these Terms and Conditions, the terms of the relevant Order will prevail.

1.5 Subject to clause 1.2, the terms of the Contract comprise the entire agreement of the parties in relation to the applicable provision 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 provision of the Goods and/or Services (for example, the Supplier's standard purchase terms and conditions) will not apply.

1.6 Orders may be placed by any department of the Council. In all such cases, Council is the principal contracting party and is solely responsible for the obligations arising under the Contract.

1.7 If an Order is not accepted by the Supplier's written acknowledgement or:

- (a) in the case of Goods – Delivery; or

- (b) in the case of Services – Delivery or Service Commencement (as the case may be);

within 10 Days of the date of the Order, Council may, by written notice to the Supplier, cancel the Order.

1.8 Any estimates provided by the Council in relation to an Order are provided for the assistance of the Supplier. Such estimates do not form part of the Contract and do not in any way give rise to any price adjustment claim by the Supplier.

2. Provision of the Goods and/or Services

2.1 The Supplier shall Deliver the Goods and/or Services and fulfil its other obligations in accordance with the requirements of the Contract and in compliance with all applicable statutes and regulations, permits and authorisations and by-laws and standards.

2.2 Subject to clause 2.3, the Council shall pay for the provision of the Goods and/or Services by the Supplier in accordance with clause 3.

2.3 Payments may be withheld or delayed if insufficient information is supplied to enable a claim for payment to be verified. No interest will be payable on any payments withheld by Council under this clause.

3. Terms of payment

3.1 The Supplier shall, following Delivery of the Goods and/or Services, send an invoice to the Council in the form and manner required by clause 3.4.

3.2 Subject to compliance with the Contract and there not being manifest errors or discrepancies, the Supplier's invoice for the Goods and/or Services will be paid by Council on the 20th day of the month following the date of the invoice or the next Working Day, provided the invoice has been received by the Council no later than the 5th day of the month.

Example: For monthly goods or services provided in January:

- A valid invoice dated 31st January and delivered by 5th February will be paid on 20th February
- A valid invoice dated 31st January and delivered between 6th February and 5th March will be paid on 20th March.

3.3 Subject to receipt of all required Taxable Supply Information, the Council shall pay GST on all amounts payable under this Contract that are a taxable supply under the GST Act. GST shall be payable on the date for payment of the corresponding supply.

3.4 In addition to any invoice requirements set out in clause 3.3, the Supplier's invoice must meet any relevant Inland Revenue Department (IRD) requirements (including being correctly named, dated, addressed and itemised in terms of charges and GST) and also:

- (a) be typewritten (either computer generated or typed), and must not be handwritten;
- (b) be sent by email to creditors@ncc.govt.nz ;
- (c) include the relevant Purchase Order Number;
- (d) include the name of the legal entity of the Supplier and at least one Identifier Detail;
- (e) include the relevant bank account number of the Supplier;
- (f) include the GST/IRD number of the Supplier; and
- (g) be clearly issued to the Council.

3.5 The Delivery of any Goods must be accompanied by detailed advice notes (packing slips).

3.6 The Supplier shall ensure that, in addition to any invoices, all packing slips, advice notes and correspondence to the Council contain the applicable Purchase Order Number and any other information specified in the Order or as reasonably requested by the Council.

3.7 If any aspect of an invoice or the Delivery of the Goods and/or Services is disputed by Council, Council may withhold payment of the relevant invoice or part thereof until such time as the dispute is resolved.

3.8 In making payment for the Goods and/or Services, Council may withhold, deduct or set off any amount that was previously overpaid or any amount recoverable by Council from the Supplier under the Contract or otherwise.

3.9 The Council shall not (except as set out in these Terms and Conditions) be liable for any corporate, personal, schedular or withholding taxes or other taxes and levies in respect of the Supplier, its employees, or subcontractors arising in connection with the Contract. The Supplier shall indemnify the Council for any claim upon it by the Inland Revenue Department for any corporate, personal, schedular or withholding taxes or other taxes or levies which should have been paid in respect of the Supplier, its employees or subcontractors and/or any payment to the Supplier under the Contract.

3.10 The parties acknowledge that any Services provided by the Supplier under the Contract in New Zealand may in part be subject to Schedular Payments tax payment obligations under New Zealand tax legislation. The Council may make all such deductions as are required by New Zealand tax law from the amounts payable under the Contract.

3.11 Where applicable, the Supplier will use reasonable endeavours to obtain a Certificate of Exemption in respect of any Schedular Payments tax payment obligations. If the Supplier does not obtain a Certificate of Exemption it shall provide to the Council, with each invoice, all information required to establish the amounts payable in relation to Services provided in New Zealand and that are subject to Schedular Payments tax payment obligations.

3.12 If after making any payment to the Supplier under the Contract it is subsequently determined that the Council should have deducted Schedular Payments tax (or any additional amount of such tax) or any other withholding from that payment then the Supplier will, on receipt of written demand from the Council, pay such amount to the Council

together with all interest and penalties payable on such amounts.

4. Delivery

4.1 The Supplier must obtain a valid Purchase Order Number from the Council before supplying any Goods and/or Services.

4.2 The Supplier shall diligently Deliver any Services in accordance with any special requirements set out in the Order, all applicable industry and good practice standards, all statutory and regulatory requirements and with due care and skill.

4.3 Any Goods supplied against an invalid Purchase Order Number may be returned at the Supplier's expense including the cost of packing, transporting, insuring and handling of the rejected Goods.

4.4 The Supplier is responsible for the safe and undamaged delivery of any Goods to the Council, in accordance with all reasonable Council instructions. The Supplier will adequately pack and protect the Goods against damage and deterioration, at the Supplier's expense.

4.5 The Supplier must Deliver the Goods and/or Services not later than the time/s specified in the Order or, if no time is specified in the Order, within a reasonable time of the date of the Order. In this regard time is of the essence.

4.6 The Supplier is responsible for the removal and disposal of all packing containers and materials associated with the Delivery of the Goods and/or Services.

4.7 Where required by the Order, the Supplier will install any Goods at a Site in accordance with the Installation Instructions, all applicable industry and good practice standards, all statutory and regulatory requirements and with due care and skill.

5. Acceptance of Goods

5.1 Any Goods shall be accepted by the Council on 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. Passing of title and risk of Goods

6.1 Property in any Goods and risk passes to the Council on Delivery and Acceptance.

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

6.3 The Supplier warrants it has the right to sell any Goods.

7. Warranties as to Goods

7.1 The Supplier warrants, in addition to all other Supplier warranties at law, that:

- (a) the Goods are (unless specified otherwise in the applicable Order) new, are in good operating order and in good and merchantable condition, comply with any Product Specification and are fit for the purpose for which they are intended as stated in any Product Specification or otherwise as held out by the Supplier;
- (b) the Goods comply with all applicable product standards and regulatory or other statutory requirements; and

- (c) The Goods are to the same or better standard as any sample provided to the Council for testing or evaluation.

7.2 The Supplier will provide the manufacturer and further warranties and guarantees relating to any Goods (if any) set out in the applicable Order to the Council. All such warranties and guarantees shall be in favour of or assigned to the Council.

7.3 The Supplier shall also provide all standard manufacturer or supplier warranties and guarantees relating to any Goods provided to the Council.

8. Warranties as to Services

8.1 The Supplier warrants that the Intellectual Property utilised or provided by the Supplier in the provision of the Services does not infringe the Intellectual Property rights of any other person.

9. Defective Goods

9.1 Defective Goods are Goods that:

- (a) do not comply with the quality warranty requirements set out in clause 7;
- (b) are dangerous or harmful in normal use;
- (c) do not have adequate instructions to enable normal use; and/or
- (d) are otherwise not in compliance with the requirements of this Contract.

9.2 Subject to clause 9.3, and without prejudice to any other remedy or right of the Council under this Contract or at law, Defective Goods may be returned by the Council within 30 days following Acceptance (unless another relevant period for return is specified in the Order).

9.3 Where the relevant Goods are placed in Council stores pending installation, Defective Goods may be returned by the Council within 30 days following the date the Goods item is installed and put into service.

9.4 The Supplier will, at the Supplier's cost, immediately replace all Defective Goods returned under this clause. Where replacement is not practicable the Supplier will at the Council's option repair the Defective Goods or make a prompt full refund of the price of the Defective Goods to the Council.

9.5 The Supplier will, if required by the Council, uplift Defective Goods at its risk and cost.

9.6 The Supplier's replacement and repair obligations under this clause include installation as required, at the Supplier's cost.

10. Defective Services

10.1 If the Supplier does not Deliver Services in accordance with the Contract, then, at the sole option of the Council, and without prejudice to any other remedy or right of the Council under this Contract or at law, Council may:

- (a) 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
- (b) suspend payment for the Services until the breach has been remedied to Council's reasonable satisfaction (with any Supplier costs or delay arising

from a suspension pursuant to this clause being the responsibility of the Supplier).

11. Default and termination

11.1 Either the Council or the Supplier may terminate this Contract immediately by notice in writing if the other party commits any material breach of this Contract and fails to remedy the breach within 15 Working Days of receiving written notice of such breach.

11.2 The Council may immediately terminate this Contract, by giving written notice of termination to the Supplier, if any of the following events occur:

- (a) the Supplier having 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 having 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 this Contract;
- (d) the Supplier fails to Deliver the Goods and/or complete the Services within five Working Days of any relevant date specified in the applicable Order; or
- (e) any Goods, or a material portion of any Goods, are defective.

12. Indemnity

12.1 The Supplier shall be liable for and shall indemnify the Council in respect of any damages, costs, loss or expenses incurred by the Council as a result of any breach by the Supplier of any of its obligations under this Contract, or as a direct result of any other negligent or fraudulent error or omission on the Supplier's part in the provision of the Goods and/or Services.

13. Force majeure

13.1 Force Majeure means any cause reasonably beyond a party's control and where the party cannot reasonably mitigate its effects including strikes, lockouts, riots, acts of war, epidemics, governmental action superimposed after the date of this Contract, fire, power failures, earthquakes or other disasters.

13.2 Force Majeure does not include industrial action on the part of the Supplier or the Supplier's employees.

13.3 Epidemics shall be force majeure but only to the extent they are a Pandemic.

13.4 If any party to this Contract is unable to carry out that party's obligations under this Contract due to Force Majeure, the party who cannot carry out its obligations must give the other party notice as soon as practicable of the cause and insofar as it is known the probable extent to which the party giving the notice will be unable to perform or will be delayed in performing its obligations.

13.5 On the issue of a Force Majeure notice, the party giving the notice will not be liable to the other party insofar as that party is prevented during the continuation or intervention of such cause to carry out those obligations.

13.6 The party giving a Force Majeure notice must take all reasonable steps to eliminate or reduce the Force Majeure

effects and must resume performance as promptly as is practicable.

13.7 Should the Force Majeure event continue for a period exceeding 40 Working Days from the date the party that is unable to comply with its obligations under this Contract has given notice to the other party, then the party being the recipient of that notice may terminate this Contract pursuant to this clause by giving written notice to the other party.

14. Relationship between parties

14.1 Nothing in the Contract should be interpreted as constituting either Council or the Supplier, an agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in the Contract.

14.2 Council's relationship with the Supplier is not exclusive.

14.3 The Supplier acknowledges that where Council is provided Goods and/or Services as a consumer (as that term is defined in the Consumer Guarantees Act 1993), then that act applies to the acquisition of the Goods and/or Services.

15. Confidentiality

15.1 The Supplier agrees the Confidential Information shall be treated as confidential. Subject to clause 16, the Supplier shall not disclose Confidential Information to any third party (other than as is required to Deliver the Goods and/or Services and where applicable install any Goods).

15.2 The Supplier shall not use or attempt to use any Confidential Information for any purpose other than to carry out its obligations under this Contract.

15.3 Subject to clause 16, the Supplier may release the Confidential Information where (and only to the extent) required to be disclosed by any law or competent authority or in relation to any proceedings or action before any court, tribunal or other competent body.

16. Official Information legislation

16.1 The parties acknowledge that Council is subject to the Local Government Official Information and Meetings Act 1987 and that under that Act the Council may be required to release information about this Contract and the Supplier.

16.2 In addition, the Supplier agrees to comply with the requirements of the Local Government Official Information and Meetings Act 1987 in relation to all information relating to the Council held by the Supplier or its employees.

16.3 The Supplier will only release information to a third party under the Local Government Official Information and Meetings Act 1987 through the Council unless compelled by a competent authority, in which case it will immediately advise the Council as to the information released.

17. Media statements

17.1 The Supplier shall not and shall ensure that the Supplier's personnel and subcontractors and their personnel do not release public or media statements or publish material (including without limitation on any Social Media Platform) related to this Contract without the prior written approval of the Council.

17.2 For the purposes of this clause 'Social Media Platform' means any website or application that enables users to

create and share content or to participate in social networking, microblogging or the like.

17.3 The Supplier shall not respond to media requests for information or comment in relation to the supply of the Goods and/or Services or in any way relating to this Contract. All such requests shall be referred to the Council for reply.

18. Health and safety

18.1 The Supplier shall, in providing the Goods and/or 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.

18.2 Where the Supplier has sole possession of the Site, the Supplier shall, for the purposes of sections 37(1) and 38(1) of the HSW Act, be the PCBU who manages or controls the Site and the fixtures, fittings and plant on the Site.

18.3 The Supplier will ensure that its personnel where accessing any Council site or premises in the course of providing the Goods and/or Services:

- (a) comply with (as applicable) all Council health and safety policies and procedures notified by the Council and all health and safety requirements as notified by the contractor or person who manages or controls the site or premises; and
- (b) will not do or omit to do anything that would expose its personnel or any other person to the risk of injury.

18.4 Unless the Supplier holds a current health and safety pre-qualification approval from Council, the Supplier will provide a copy of its health and safety plan to the Council prior to commencing the provision of the Goods and/or Services. In either case the Supplier will provide any updates or revisions to the health and safety plan to the Council within 10 days of making any such changes.

18.5 Where indicated in the Order, the Supplier shall provide its contract specific health and safety plan to the Council prior to commencing provision of the Goods and/or Services. The safety plan shall cover all aspects of the management of health and safety in relation to the provision of the Goods and/or 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.

18.6 Where applicable the Supplier will consult with each other party that has duties as a PCBU in relation to the Site and the provision of the Goods and/or Services.

18.7 The Supplier shall notify the Council promptly after any of the following occurs:

- (a) an accident or an incident notifiable to the Council in terms of such policies and procedures;
- (b) a hazardous situation which the Supplier becomes aware of in relation to this Contract; and
- (c) a notifiable event under the HSW Act.

18.8 The Supplier shall:

- (a) maintain a register of accidents and serious harm;
- (b) investigate accidents and identify their cause;
- (c) ensure that all persons under the Supplier's control are appropriately supervised; and

(d) provide written notification (and copy to the Council) to the regulator of all notifiable events in accordance with section 56 of the HSW Act.

18.9 The Supplier shall give to the Council a copy of any report which the Supplier is required to make to a public authority on any accident which is associated with the delivery and installation of the Goods and/or the provision of the Services and results in serious harm to any person.

18.10 The Council may require the Supplier to cease the provision of the Goods and/or 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.

19. Intellectual property

19.1 All Intellectual Property owned by either party and existing prior to the commencement of this Contract will remain the exclusive property of that party.

19.2 The Supplier agrees that, unless specified otherwise in the Order, 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 providing the Goods and/or Services will be Council's exclusive property.

19.3 The Supplier grants to Council a perpetual, royalty free, non-exclusive licence to use all Intellectual Property owned by the Supplier under clause 19.1 that is required for the effective use the Goods and/or Services provided by the Supplier.

20. Assignment and subcontracting

20.1 The Supplier shall not assign any substantial right or obligation under the Contract without the written consent of the Council which may be given or withheld at the Council's sole discretion.

20.2 The Supplier shall not subcontract all or any material part of the provision of the Goods and/or Services without Council's prior written approval.

21. Notices

21.1 All notices, documents, requests, demands or other communication to be given for the purposes of this 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 each party.

21.2 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 recipient's system;
- (c) by registered mail is deemed to be served three Working Days after the date of posting.

21.3 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.

22. Severance

22.1 The illegality, invalidity or unenforceability of any provision in this Contract will not affect the legality, validity or enforceability of any other provisions.

23. Waiver

23.1 No right under this Contract shall be deemed to be waived except by notice in writing signed by the party providing the waiver.

23.2 A waiver by either party will not prejudice its rights in respect of any subsequent breach of this Contract by the other party.

23.3 Any failure by either party to enforce any clause of this Contract, or any forbearance, delay or indulgence granted by a party will not be construed as a waiver of that party's rights under this Contract.

24. Governing Law and Jurisdiction

24.1 This 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.

25. Survival of obligations

25.1 The obligations of the parties as to Intellectual Property, Media statements, Confidentiality and Official Information shall survive the termination or expiry of this Contract.

26. Disputes

26.1 In the event of a dispute arising the parties shall actively and openly endeavour to amicably settle such dispute themselves, with a view to achieving prompt resolution. In the event that any such dispute cannot be resolved between the parties within fifteen (15) Working Days after the dispute was first raised, then either party may refer it for final determination by the courts.

27. Interpretation

27.1 In these Terms and Conditions:

Accepted and Acceptance means the acceptance of any Goods by the Council in accordance with clause 5.1.

Confidential Information means any information relating to the Goods and/or Services, the Council, any client or customer of the Council, any ratepayer or member of the public that comes into the possession of the Supplier in connection with this Contract other than:

- (a) has been published or otherwise has become part of the public domain other than through acts or omissions of the recipient;
- (b) has been furnished to the recipient by persons other than the Council (which term includes persons employed by or acting for the Council) as a matter of legal right and without restriction on disclosure;
- (c) was already in the possession of the recipient without restriction or disclosure; or
- (d) is required (and only to the extent so required) to be disclosed by any law or in relation to any proceedings or action before any court, tribunal, or other competent authority or body.

Contract means the contract between the Council and the Supplier arising pursuant to clause 1.3.

Council means the Nelson City Council.

Delivery means:

- (a) in the case of Goods, the delivery of the Goods to the Site nominated by Council; and
- (b) in relation to Services, the completion of the provision of the Services;

and in both cases **Deliver** has a corresponding meaning.

Goods means the goods, materials or substances specified in the applicable Order and all parts or components of the same.

GST means goods and services tax chargeable under the GST Act.

GST Act means the Goods and Services Tax Act 1985.

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

Identifier Detail means an address (physical or postal), phone number, email address, trading name (if different to the names of the Supplier), New Zealand Business Number or website URL address.

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

Intellectual Property means any methodologies, procedures, software, technical handbooks and information, data and factual information, drawings, plans, designs, specifications, copyright, patents, designs, trademarks (registered or unregistered) or other protectable rights.

Order means an official Council purchase order which may be placed with the Supplier from time to time.

Pandemic means a serious disease that is widespread in New Zealand and is declared to be a Pandemic by the New Zealand Government or other governmental authority or is the subject of a declaration of a state of National Emergency in New Zealand.

Product Specification means the product specification(s) or description(s) applicable to the Goods as provided by the Council or held out by the Supplier.

Purchase Order Number means the number set out on the Order as relating to that particular purchase.

Service Commencement means the commencement of the provision of the Services by the Supplier.

Services means the services specified in the applicable Order to be provided or performed by the Supplier.

Site means the site or address to which the Goods and/or Services are to be Delivered (and where applicable installed) as set out in the applicable Order.

Supplier means the person, firm, company or corporate entity to whom Council issues an Order.

Taxable Supply Information means all taxable supply information as set out in section 19E of the GST Act.

Terms and Conditions mean these terms and conditions.

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

27.2 In these Terms and Conditions:

- (a) All monetary amounts are exclusive of GST and in New Zealand dollars unless provided otherwise.
- (b) Where the context permits the singular includes the plural and vice versa.
- (c) References to any party means the parties to this Contract and includes their respective successors and permitted assignees (as the case may be).
- (d) References to clauses, schedules and to any attachments are to clauses, schedules and attachments (if any) to these Terms and Conditions (unless otherwise stated).
- (e) Where the context permits references to the Supplier include the Supplier's employees, agents and officers.
- (f) 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.
- (g) 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.
- (h) Obligations that bind more than one person shall bind those persons jointly and severally.
- (i) Defined expressions are signified by capitalisation.
- (j) The headings in this Contract shall not be used in its interpretation.