



Purchase Order for Minor Works

City of Salisbury ABN 82 615 416 895 of 12 James Street, Salisbury South Australia 5108 Postal Address: PO Box 8, Salisbury SA 5108, Telephone: +61 8 8406 8222, Fax: +61 8281 5466, Email: city@salisbury.sa.gov.au				
Date: [Insert]	Purchase order number:	[Insert]	(please quote on ALL tax invoices)	
Council	City of Salisbury ABN 82 615 416 895 Address: 12 James Street, Salisbury South Australia 5108 Phone: +61 8 8406 8222 Fax: +61 8 8281 5466 Email (general): city@salisbury.sa.gov.au Email (invoices): payables@salisbury.sa.gov.au			
Council's Representative	[Name] Position: [Position] Phone: [Phone] Mobile: [Mobile] Email: [Email]			
Address	where the works are to be performed: [Address]			
Date(s)	When the works are to be performed:	From [Start date]	To	[End date]
Special arrangements (if any)	[Insert]			
Quantity:	The Works (including Specifications)	Price	GST	Total Cost
[Insert]	[insert detailed description]	[Insert]	[Insert]	[Insert]
[Insert]	[insert detailed description]	[Insert]	[Insert]	[Insert]

<p>Contractor</p> <p>Payment Terms:</p>	<p>[Full name of legal entity from ABN registration]</p> <p>ABN: [ABN]</p> <p>Address: [Address]</p> <p>Phone: [Phone]</p> <p>Fax: [Fax]</p> <p>Email: [Email]</p> <p>In accordance with clause 5 of the Terms and Conditions unless otherwise specified</p>
<p>Warranty Period:</p>	<p>Fifty-two (52) calendar weeks from completion of the Works</p>
<p>Warranty Response Time:</p>	<p>[Insert]</p>
<p>Insurance Requirements</p>	<p>Professional Indemnity Insurance</p> <p>Amount: [\$ Insert] Until completion of the warranty period <i>*Certificate of currency to be attached</i></p> <p>Public Liability Insurance</p> <p>Amount: \$20,000,000 is required <i>*Certificate of currency to be attached</i></p>
<p>Confidential Sections (if any)</p>	<p>Nil [or insert here]</p>
<p>Special Conditions (if any)</p>	<p>[Insert]</p>

EXECUTED as an Agreement

By the Council

Date:

SIGNED under delegated authority in the presence of:	
..... Signature of Chief Executive Officer/General Manager/Manager Procurement Services Signature of witness
..... Name of Chief Executive Officer/General Manager/Manager Procurement Services (print) Name of witness (print)
 Address of witness (print)

By the Contractor

Date:

SIGNED by [Insert Company] in the presence of:	
..... Signature of Contractor Signature of witness
..... Name of Contractor (print) Name of witness (print)
 Address of witness (print)

Please see next page for Terms and Conditions.

Terms and Conditions of Purchase

1. Definitions

In this agreement:

Confidential Information means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement, but excludes any information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.

Intellectual Property means all rights conferred by statute, common law or equity in relation to patents, inventions, registered and unregistered designs, registered and unregistered trademarks, trade names, logos and get up, confidential information, copyright and moral rights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Purchase Order means the Purchase Order on the front page of these Terms and Conditions.

Terms and Conditions means these Terms and Conditions.

Works means any works and services specified in the Purchase Order together with any additional works necessary for the performance of this agreement.

Expressions used in the Purchase Order have the same meaning in these Terms and Conditions.

2. Interpretation

In this document, unless the context otherwise requires:

- 2.1 a reference to this agreement means the Purchase Order and the Terms and Conditions;
- 2.2 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 2.3 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 2.4 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 2.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it.
- 2.6 a provision is not construed against a party only because that party drafted it;
- 2.7 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 2.8 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions.

3. Application

This agreement:

- 3.1 applies to all Works performed by the Contractor to the Council and the Contractor is deemed to have read and agreed to this agreement prior to filling any order for the Works; and
- 3.2 prevails over the Contractor's terms and conditions of sale or any other documents provided by the Contractor.

4. Supply

The Contractor agrees to supply the Works and the Council agrees to purchase the Works on the terms of this agreement.

5. Payment

Unless otherwise specified in the Payment Terms, the Council must pay the price specified in the Purchase Order by cheque or electronic funds transfer within thirty (30) days of the end of the month in which the tax invoice is issued by the Contractor. The tax invoice cannot be issued until the Works have been completed by the Contractor.

6. Service Standards

The Contractor must:

- 6.1 perform the Works in a professional and competent manner with due care, skill and diligence and within the time specified in the Purchase Order;
- 6.2 comply fully and promptly at its own cost with all laws, applicable standards, codes of practice, by-laws, orders and regulations at present or in the future relating to the performance of the Works and with all requirements, notices or orders in respect of anything affected by the Works;
- 6.3 provide at its own cost all supervision, labour, materials plant, tools and equipment, transport and temporary works required for the performance of the Works;
- 6.4 be responsible for the care of the Works from the date of commencement until completion, including the care, storage and protection of unfixed items and items provided by the Council (if any); and
- 6.5 provide, erect and maintain all barricades, fences, signs, lighting and temporary works necessary for the protection of the Works, other property and for the safety and convenience of the public.

7. Warranties by Contractor

- 7.1 The Contractor warrants that the Works will:
 - 7.1.1 be of good merchantable quality and fit for their purpose;
 - 7.1.2 be performed using new materials, unless otherwise notified in writing by the Contractor;
 - 7.1.3 conform with the description and the Specifications in the Purchase Order; and
 - 7.1.4 throughout the Warranty Period, operate in accordance with the Specifications, and otherwise in accordance with the operation of similar products.
- 7.2 If any Works are found to be defective or do not comply with clause 7.1.1 to 7.1.4 and the Council notifies the Contractor of the defect during the Warranty Period, the Contractor must, at its own cost, promptly rectify any defects in the Works within the Warranty Response Time.
- 7.3 Failing rectification by the Contractor during the Warranty Response Time, the Council may rectify defects at the cost of the Contractor.

8. Insurance

- 8.1 The Contractor must maintain at all times the Contractor's Insurances for at least the cover specified in the Purchase Order.
- 8.2 The Contractor must maintain the Contractor's Insurances for at least 6 years following completion of the Works unless otherwise specified in the Purchase Order.

- 8.3 The Contractor must provide certificates of currency in respect of the Contractor's Insurances before commencing the Works and when reasonably requested by the Council.

9. Work Cover

If applicable:

- 9.1 the Contractor must comply with the *Work Health and Safety Act 2012 (SA)* and all associated regulations, including those adopted by the Council, and must ensure that its employees and contractors comply with all regulations, notices and codes of practice having application to this agreement;
- 9.2 the Contractor must comply with all reasonable directions and procedures relating to security and occupational health, safety and welfare as required by the Council; and
- 9.3 the Contractor must immediately notify the Council of any incident or accident arising from the performance of this agreement, including any incident or accident involving the public.

10. Contractor Indemnities

The Contractor indemnifies the Council against all actions, proceedings, claims, demands, charges, penalties, expenses and all other liabilities arising from or in relation to the performance or non-performance of any of the Contractor's obligations under this agreement.

11. Intellectual Property

- 11.1 Other than any drawings or specifications provided by the Council to the Contractor, the Contractor warrants that the Works will not infringe the Intellectual Property of any third party.
- 11.2 The ownership of Intellectual Property produced as a result of this agreement vests solely in the Council immediately on its creation.
- 11.3 The Contractor is granted a royalty free non-transferrable non-exclusive licence to use any Intellectual Property:
- 11.3.1 produced as a result of this agreement; or
 - 11.3.2 relating to the drawings and specifications or the Confidential Information provided by the Council to the Contractor;
- solely for the purpose of completing the Works and for no other purpose.

12. Force Majeure

No party is liable for any failure to perform or delay in performing its obligations under this agreement if that failure or delay is due to anything beyond that party's reasonable control. If that failure or delay exceeds sixty (60) days, the Council may terminate this agreement with immediate effect by giving notice to the other party.

13. Termination

- 13.1 The Council may immediately terminate this agreement by giving notice to the other party if the Contractor:
- 13.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement;
 - 13.1.2 breaches a material provision of this agreement and fails to remedy the breach within a specified reasonable time after receiving notice requiring it to do so;

- 13.1.3 becomes an externally-administered body corporate or an insolvent under administration or becomes insolvent (each within the meaning of the *Corporations Act 2001*).
- 13.2 Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

14. Confidential Information and Freedom of Information

- 14.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes contemplated by this agreement, and agrees that it will:
- 14.1.1 keep confidential; and
- 14.1.2 not use or reproduce in any form;
- any Confidential Information belonging to the other party. A party may depart from its obligations under this clause only with the written consent of the other party or as required by law or the terms of this agreement.
- 14.2 The Contractor consents to any disclosures made as a result of the Council complying with its obligations under the *Freedom of Information Act 1991 (SA) (FOI Act)*, subject to any legally required consultation.
- 14.3 Subject to clause 14.1, for the purposes of the FOI Act, the terms specified confidential in the Purchase Order are confidential (confidential sections).
- 14.4 Unauthorised disclosure of the confidential sections and their subject matter is a breach of this agreement.

15. Audit of Services

The Contractor must keep the Council fully and regularly informed as to all matters relating to the Works and must provide to the Council any information reasonably requested by the Council for the purposes of monitoring the performance of the Contractor's obligations under this agreement.

16. Disputes

A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.

On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.

If the parties are unable to resolve the dispute within ten (10) business days, they must promptly refer the dispute:

- in the case of the Council to the Chief Executive Officer; and
- in the case of the Contractor to the Contractor's Representative.

Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.

All disputes or differences between the Council and the Contractor must be referred to an arbitrator, agreed by the parties or in the absence of agreement appointed by the Chairperson for the time being of the South Australian Chapter of the Institute of Arbitrators and Mediators Australia.

17. Relationship

This agreement does not create a relationship of employment, agency or partnership between the parties.

18. Miscellaneous

18.1 Special conditions

If there is an inconsistency between a special condition set out in the Purchase Order and the rest of this agreement, the special condition governs to the extent of the inconsistency.

18.2 Alteration

This agreement may be altered only in writing signed by each party.

18.3 Assignment

The Contractor must not assign this agreement or any right under it without the prior written consent of the Council.

18.4 Entire agreement

This agreement:

18.4.1 constitutes the entire agreement between the parties about its subject matter; and

18.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

18.5 Waiver

A waiver of a provision of or right under this agreement:

18.5.1 must be in writing signed by the party giving the waiver;

18.5.2 Is effective only to the extent set out in the written waiver.

18.6 Exercise of power

18.6.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

18.6.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

18.7 Survival

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

18.8 Governing law

18.8.1 This agreement is governed by the law in South Australia.

18.8.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

18.9 Ombudsman

The Contractor acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Contractor must ensure compliance with all obligations arising under that Act and all other applicable laws.

18.10 ICAC

The Contractor acknowledges when entering into a contract with the Council they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act 2012 (SA)* (**ICAC Act**) and will be obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

19. GST

- 19.1 The total amounts payable under this agreement are inclusive of GST, if applicable.
- 19.2 Notwithstanding any other provision of this agreement, the Council need not make any payment for a taxable supply made by the Contractor under this agreement until the Contractor has given the Council a tax invoice in respect of that taxable supply.

20. Notices

- 20.1 A notice, demand, consent, approval or communication under this agreement (Notice) must be:
 - 20.1.1 in writing, in English and signed by a person authorised by the sender; and
 - 20.1.2 hand delivered or sent by pre-paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Purchase Order, as varied by any Notice given by the recipient to the sender.
- 20.2 A Notice is deemed to be received:
 - 20.2.1 if sent by prepaid post, two (2) business days after posting;
 - 20.2.2 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;
 - 20.2.3 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a law of the Commonwealth of Australia.