

**HAMILTON CITY COUNCIL
PURCHASE ORDER TERMS AND CONDITIONS**

The Council may issue a purchase order (PO) Suppliers. These General Terms and Conditions apply to each PO. "PO" is a reference to a purchase order issued by Council under these Terms and Conditions.

1 DEFINITIONS

- 1.1 In these Terms and Conditions, unless context otherwise requires:

Agreement means these Terms and Conditions together with any PO to which they apply.

Council means Hamilton City Council.

Goods means goods to be supplied by the Supplier as specified in a PO.

Services means services to be performed by the Supplier as specified in a PO.

Supplier means any person providing Goods and/or Services to Council in accordance with a PO and includes any person performing works on behalf of the Supplier.

Terms and Conditions means these General Terms and Conditions.

2 ACCEPTANCE OF ORDER

- 2.1 A PO is an offer by the Council that is deemed to be accepted upon the Supplier acknowledging acceptance in writing or commencing to supply the Goods or Services to which the PO relates.
- 2.2 A PO will expire after 7 days of its issue unless accepted by the Supplier.
- 2.3 The Council can withdraw the PO at any time prior to acceptance by the Supplier.
- 2.4 Additional or different terms or pricing proposed by the Supplier do not apply unless accepted in writing by Council.
- 2.5 The terms stated in the PO and these Terms and Conditions form the entire agreement between Council and the Supplier in relation to the subject matter of the PO. and supersede any previous discussion, arrangements or representations relating to the same.
- 2.6 In the event that the parties have a signed written agreement in respect of Goods or Services then to the extent of any inconsistency, the terms of that agreement will prevail over the terms of the relevant PO and these Terms and Conditions. If there is any inconsistency between these Terms and Conditions and the PO, then to the extent of that inconsistency, the PO will prevail.

3 PRICE

- 3.1 The price stated in the PO is exclusive of GST and any duty, but is otherwise all inclusive of freight, insurance and any other charges or taxes.
- 3.2 Price/estimate will be indicated within the job plan by the individual Council unit when generating a PO (as applicable).
- 3.3 Any variation to price must be agreed to by the Council prior to the acceptance of the PO.
- 3.4 All amounts stated in a PO are in New Zealand dollars unless otherwise expressly stated in that PO.
- 3.5 If there is any delay in the payment of an invoice relating to a PO, Council will not be liable for any late payment penalties or default interest.

4 RELATIONSHIP

- 4.1 The Supplier is an independent supplier to the Council. No legal partnership, employment, principal/agent or joint venture relationship between the parties is created or evidenced by the PO.

5 DELIVERY AND IDENTIFICATION

- 5.1 Unless specified otherwise by the Council all goods that are supplied under a valid PO shall be DDP (ICC INCOTERMS 2000) at the place of destination named by the Council.
- 5.2 The Supplier must obtain from the Council an acknowledgment of delivery of all orders.
- 5.3 Where the Council has not named a place of destination the Supplier shall be responsible for contacting the Council to obtain delivery instructions.
- 5.4 The order number for the PO shall be shown on all packages, invoices, and correspondence. Any goods supplied by the Supplier against an invalid PO may be returned at the Supplier's expense.
- 5.5 Each consignment shall be accompanied by a delivery note.
- 5.6 Partial deliveries may be accepted at the Council's discretion.
- 5.7 All goods/services shall be delivered within the time specified in the PO, should any delay occur, the Supplier must ensure that the Council is notified as early as possible and before the date of delivery, as shown on the PO. The Council reserves the right to void or cancel the order if not delivered within the agreed time frame.
- 5.8 All goods must be adequately packaged to prevent deterioration or damage whilst in transit.

6 QUALITY GOODS

- 6.1 The Council reserves the right to have the goods inspected or tested before, on or after delivery by an officer appointed by the Council and the Supplier shall facilitate inspection or testing when required.
- 6.2 The Council may reject any good that is:
- of inferior quality;
 - contrary to the specifications for the goods; or
 - in an unsatisfactory condition or not functioning in the way they are designed to function, and
- for any such rejected goods the Supplier shall, at the Council's sole option and at the Supplier's sole risk and expense, either:
- repair or replace it and reimburse the Council for any loss of function attributable to it; or
 - remove it and reimburse the Council in full any payments made by the Council in respect of it.

7 QUALITY ASSURANCE

- 7.1 The Supplier will provide the goods or perform the services using due diligence, care, and skill, using sufficient appropriately trained, qualified, experienced, and supervised persons.
- 7.2 The Supplier will:
- ensure that the services satisfy the requirements of the Council and are fit for the purpose intended.
 - have and comply with standards (including any environmental policies) and any quality assurance system approved or required by the Council.
- 7.3 If a standard is not specified, it will be the highest in the relevant industry.

8 OPERATIONAL REQUIREMENTS (physical works only)

- 8.1 The Supplier must report to reception and sign in (where applicable) prior to the commencement of any work. On completion of the work, the Supplier must sign out at reception (where applicable).
- 8.2 The Supplier must provide the Council with regular updates on job status e.g. that the work has been completed, the job is in progress or that the job timeframe needs to be extended etc.
- 8.3 The Supplier shall obtain at the Supplier's expense, a photo Identification Card from the Council supplier for each person whom they employ to work on the Council's assets. The identification card will contain a colour photograph of the person, their name, the company name, and the expiry date of the ID card. The Supplier's personnel shall wear the identification when working at the Council's assets. The Supplier is responsible for recalling the ID card when employment ceases between the individual and the Supplier.

9 PHYSICAL WORK

Where any physical work is involved, the Supplier must:

- promptly and properly complete the work, but only when approved by the Council, and minimise any disruption to anyone; and
- tidy up those areas accessed by the Supplier during the work and promptly make good any damage or problems caused by the Supplier.

10 NEGLECTED PROPERTY (physical works only)

- 10.1 If your property is not removed from any relevant Council property by when required by the Council, it may be disposed of by the Council at your risk and cost.

11 INTELLECTUAL PROPERTY

- 11.1 The Council must be informed if anything used to deliver the goods/services belongs to any third party. The Supplier must ensure that the Council has all the necessary rights (and documentation) to fully enjoy the full benefits of the goods or service.
- 11.2 The Supplier warrants to the Council that ownership (where intended), possession, use, modification, or resale of any deliverable supplied will not infringe any third-party rights and the Supplier will protect and hold harmless the Council and its clients from any related claims or proceedings. The Council may freely participate in any infringement proceedings.
- 11.3 If any new intellectual property is developed during, or as the purpose of, any delivery of any deliverable, it will belong to the Council. If requested by the Council, the Supplier will assign any rights and transfer every relevant proprietary interest/right to the Council or its nominee and agrees to duly execute all documents and provide all information as required by the Council to effect such assignment.

12 INVOICING AND PAYMENT

- 12.1 Invoices should be sent to ap@hcc.govt.nz.
- 12.2 If correct tax invoices are received by the accounts payable department of Council by the 5th working day of the month, undisputed amounts due from the Council shall be paid to the Supplier by the 20th day of that month in respect to work completed or goods supplied in the preceding month.
- 12.3 Invoices should show a breakdown of all labour, materials, and any mileage (if applicable).
- 12.4 Invoices for part orders will not be accepted (unless progress payments are agreed to prior to the work commencing).
- 12.5 The Council shall deduct withholding tax where required by law.

13 TITLE

- 13.1 Title to any goods supplied to the Council will pass to the Council at the earlier of delivery or any payment by the Council for the goods.

14 RISK

- 14.1 Every risk to any deliverable remains with the Supplier until completion of delivery and acceptance of the service/goods. Anything involved in delivery or acceptance is provided at the Supplier's every risk and cost.

15 INDEMNITY

- 15.1 The Supplier shall at all times indemnify the Council in respect of any loss, 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 is legally liable; or
 - b) any breach by the Supplier of any warranty or other obligation in the PO.

This indemnity shall survive the termination of the PO.

16 INSURANCE

(A) Goods and General Supplies

- 16.1 While supplying any goods/services, the Supplier is to maintain insurance at the Supplier's cost, the following insurance:
 - a) Public liability Insurance for a minimum value of \$5,000,000.00
 - b) Such other insurance as specified in the PO.

(B) Services and Professional Contracts

- 16.2 While supplying any professional services, the Supplier will maintain, at the Supplier's cost, professional indemnity Insurance for a minimum value of \$2,000,000.00 for any one claim;

(C) Physical Works:

- 16.3 While undertaking any physical work, the Supplier must maintain, at the Supplier's cost, the following insurance:
 - a) Contract works insurance policy to a minimum value of \$2,000,000.00; and
 - b) Motor vehicle third party liability to a minimum value of \$5,000,000.00.

(D) UAVs:

- 16.4 While undertaking any services or works requiring an unmanned aerial vehicle (UAV) the Supplier must maintain a UAV insurance policy to a minimum value of \$2,000,000.

(E) Other Provisions:

- 16.5 The Supplier must ensure that the benefit of all insurance required under these Terms and Conditions is available to the Council for any loss, damage, expense, or third-party claim and provide insurance certificates of currency promptly upon Council's request.
- 16.6 The Supplier shall use all reasonable endeavors to maintain the required levels of professional indemnity insurance for at least six years after the completion of their obligations under a PO.
- 16.7 The Supplier shall diligently pursue any insurance claims for the full amount of the Council's loss or damage and provide Council with any information to required assist with any legal claim or action brought by, on behalf of or against Council.

17 WARRANTIES

- 17.1 The Supplier warrants and represents that that any Goods delivered are:
 - a) designed, manufactured, delivered, and operate in compliance with all applicable user requirements, specifications, and standards;
 - b) new and unused on delivery unless specified otherwise in each case by the Council;
 - c) at the time of delivery from any security interest, lien or other encumbrance;
 - d) free from any defects and are fit for the purpose intended by the Council; and
 - e) compatible with the other goods available from the Supplier.

- 17.2 The Supplier warrants and represents that all Services:

- a) Have been performed in a proper, skillful and professional manner, in accordance with recognised good practice and the terms of the Agreement;
- b) Comply with all relevant laws applicable to the conduct of the Services;
- c) Comply with all aspects of the Agreement and all applicable standards therein;
- d) If physical works, then;
 - The works, when complete comply with any applicable specifications;
 - No goods or materials generally known to be deleterious or otherwise not in accordance with good practice have been or will specified or selected by the Supplier;
 - The design of the works (to the extent the Supplier is responsible for such design) has taken or will take full account of the effect of the intended construction methods; and
 - It has satisfied itself as to the form and nature of the site where the works will be performed.

- 17.3 Unless otherwise specified, the Supplier warranty and guarantees to the Council for any deliverable will be for the greater of at least 12 months or the warranty period generally available to the Supplier's customers.

18 Each warranty is to cover any defective labour, materials, and performance. The Supplier will, to the extent possible, pass on to the Council the benefit of any warranty or guarantee received from any other person in respect of deliverables supplied, so that the Council may have recourse against those persons. LEGAL COMPLIANCE

- 18.1 The Supplier will ensure that the provisions of all goods/services and each deliverable, complies with all New Zealand laws, codes, and standards.

- 18.2 This Agreement is at all times conditional on the Supplier having and maintaining the legal right to provide the Goods and/or Services to the Council in New Zealand.

- 18.3 The Supplier is responsible to obtain and / or maintain all licenses, registrations and accreditation that entitle the Supplier to legally carry out the Supplier's duties under the Agreement and will produce evidence of such to the Council if required to do so.

19 PUBLICITY

- 19.1 The Supplier will not represent or publicise in any way to anyone that it is a Supplier of the Council or allow media releases or advertising that names or suggests the Council, without the Council's prior written consent.

20 CONFIDENTIALITY

- 20.1 The Supplier will keep confidential and secure, and not misuse, any information of the Council that would reasonably be expected to be proprietary, commercially sensitive, or confidential.
- 20.2 Disclosure and use of information by either party is allowed to the extent required by law or to the extent necessary to perform the PO.
- 20.3 The Supplier will stop using and return to the Council, or destroy if so directed by the Council, the Council property and information as requested by the Council.
- 20.4 The Supplier acknowledges that the Council's obligations under this clause are subject to its legal obligations of disclosure as a public body.

21 NO NUISANCE

- 21.1 The Supplier will not allow any unauthorised activity, nuisance, discharge of any contaminant, or making of excessive noise at relevant properties of the Council.

22 ENVIRONMENTAL REQUIREMENTS

- 22.1 Ensure goods and services supplied meet high environmental standards in their production and operational performance, consistent with ISO 14001.

23 HEALTH & SAFETY

- 23.1 The Supplier shall have in place and comply with its own Health and Safety Management Plan. The Supplier shall at all times be able to provide proof of its Health and Safety Management Plan.
- 23.2 The Supplier shall comply with all of Council's health and safety instructions, directions, plans and policies and the Health and Safety at Work Act 2015 (including any amendments and regulations).
- 23.3 The Supplier shall, also comply with relevant Hamilton City Council health and safety policies and procedures which are available to all Suppliers at <http://www.hamilton.govt.nz/our-council/health-and-safety/Pages/default.aspx>
- 23.4 These include, but are not limited to, requiring all:
 - a) Suppliers to ensure all personal protective equipment is required as per task risk assessments or minimum site requirements.
 - b) Suppliers and sub-contractors to be approved and registered on the Local Authority Contractor Pre-Qualification Database prior to undertaking any work on site. Full details of the process and costs to register with this scheme are available at <http://www.hamilton.govt.nz/our-council/health-and-safety/Pages/default.aspx>.

24 SUBCONTRACTING

- 24.1 The Supplier will not subcontract in relation to the PO without the Council's prior written approval.

25 CLAIMS AGAINST THE COUNCIL

- 25.1 In no event will the Council be liable for any consequential loss, damage or expense including any loss of profit.
- 25.2 Any claim against the Council must in writing and delivered within 3 months of the event to which it relates, and no claim shall exceed the amount paid by Council to the Supplier under the PO to which it is connected.

26 FAILURE

- 26.1 In the event of any breach or failure on the Supplier's part or conflict of interest, or inability to perform the required obligations may result in the Council suspending or cancelling in writing the PO and may result in the service being provided by another party whereby any increased cost will be met by the Supplier.

27 RELATIONSHIP MANAGEMENT

- 27.1 The Council and the Supplier will act in good faith towards one another and do all things reasonably required to ensure that the full benefit of agreement is realised by each party.