



TERMS OF PURCHASE

1 FORMATION OF THE CONTRACT

1.1 This contract for sale and purchase of Goods or Services ("Terms of Purchase") shall arise upon the Supplier's acceptance of an Order (whether by written acknowledgement or by Delivery) and shall embody the terms of the relevant Order and the following terms of purchase and any other terms the parties have agreed in writing shall apply to the Goods or Services.

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

1.3 The Council may cancel an Order by notice to the Supplier if it is not accepted by the Supplier's written acknowledgement or Delivery within 10 working days of the date of an Order.

1.4 The Terms of Purchase shall apply to every Order and supply of the Goods or Services by the Supplier unless the Council agrees otherwise in writing.

1.5 **If the Council has entered or enters into a separate contract for the supply of Goods or Services from the Supplier in writing the terms of that contract shall prevail to the extent that any of the terms are inconsistent with these terms of purchase.** In all other cases, in the event of any inconsistency or conflict between the provisions of the Terms of Purchase and the provisions of any terms of supply provided by the Supplier, the Terms of Purchase shall prevail.

2 QUANTITY FORECASTS

While the Council may give the Supplier estimates of the Council's future requirements of the Goods or Services, these estimates may prove to be inaccurate and the Supplier confirms that it will not rely on them in any circumstances. The Council does not warrant the accuracy and sufficiency of this information and the Council shall be under no obligation to purchase any or a particular quantity from the Supplier.

3 TERMS OF PAYMENT

3.1 The Supplier must, in respect of the supply of Goods and/or Services:

(a) send valid GST invoices (which comply with the Inland Revenue Department's standards) to: accountspayable@boprc.govt.nz to be received by the accounts payable department at the Council no later than the 5th working day of the following month, If the supplier does not have email access then the invoice can be sent to Accounts Payable, Bay of Plenty Regional Council, PO Box 364, Whakatāne 3158;

(b) send a statement of all invoices rendered during the previous calendar month to be received by the Council by the 5th working day of each month;

(c) mark the Purchase Order Number and any Goods numbers on all invoices, packing slips, advice notes and correspondence, as a pre-requisite to the Council accepting Delivery and making payment.

3.2 The Supplier must, in respect of the supply of Goods:

(a) mark identifying Information on the Goods and packaging for the Goods, if required by the Council;

(b) on Delivery of Goods, send detailed advice notes (packing slips), which must accompany the Goods to each delivery point;

3.3 Subject to clauses 1.5, 3.4, 3.5 and 3.6 the Council will pay for the Goods or Services by the 20th day of the month following the date of the invoice (unless specific Terms of Purchase terms dictate otherwise), by direct credit or otherwise, provided delivery and receipt of invoice has been made in accordance with the Terms of Purchase, and provided that no term of the Terms of Purchase has been breached by the Supplier.

3.4 Any invoice received by the Council without a corresponding purchase order is an unapproved purchase, the invoice will be returned to the Supplier to obtain a valid purchase order number from the individual that incurred the debt on behalf of the Council, and then resubmit their invoice including the order number.

3.5 If the Council disputes an amount in an invoice, the amount disputed shall not become due and payable by the Council until the dispute is resolved.

3.6 In making payment for the Goods or Services, the Council may withhold or deduct or set off the amount of any overpayment or any amount recoverable by the Council from the Supplier under the Terms of Purchase (including damages for breach by the Supplier) or otherwise from any future payment.

4 PRICE

4.1 The Supplier will supply the Goods and/or Services at the prices agreed between the parties. The Supplier warrants that the prices for the Goods and/or Services supplied to the Council shall be the lowest marked price offered by the Supplier in relation to these Goods and/or Services.

4.2 The price for the Goods and/or Services shall be fixed. No price reviews, price adjustments or escalation shall be allowed unless expressly agreed by the Council.

4.3 The Supplier warrants that the price for Goods and/or Services shall include all costs and unless otherwise agreed under the Terms of Purchase no additional charges may be claimed by the Supplier for the Goods and/or Services or anything relating to them, including royalties and/or licence fees.

4.4 The price of any item which the parties agree to add to the Order or which is not listed in the Order must first be agreed in writing by the parties.

5 PACKING AND DELIVERY

5.1 The Supplier must have a valid Purchase Order Number before the Supplier supplies the Goods or Services to the Council.

5.2 Goods supplied against an invalid Purchase Order Number or without packing slips marked with the valid Purchase Order Number will be returned at the Supplier's expense including (but not limited to) the cost of packing, transportation, insurance and handling the rejected Goods.

5.3 The Supplier will adequately pack and protect the Goods against damage and deterioration, at the Supplier's expense.

5.4 The Supplier must Deliver the Goods or Services not later than the time/s specified in the Order. Time will be of the essence.

5.5 The Council accepts no responsibility for the Delivery of the Goods (unless otherwise agreed) nor for packing materials or cases.

5.6 In the event of an emergency or disaster affecting the Council, the Supplier will use its best endeavours to provide, or delay Delivery as requested by the Council.

5.7 Where a dispute arises between the Council and the Supplier, the Supplier shall have no right to withhold Delivery of any Goods or Services that are subject to an Order that has been accepted by the Supplier, notwithstanding that the Council has not yet paid for those Goods or Services, it being the intent that Delivery should take place with any disputes being resolved subsequently.

5.8 All Goods supplied by the Supplier shall be, where possible packaged in recyclable packaging. For the purposes of the Terms of Purchase, cardboard and paper are considered to be recyclable packaging.

6 PASSING OF TITLE AND RISK

Risk and title to the Goods will remain with the Supplier until the Goods have been delivered to the Council when title and risk will pass to the Council.

7 WARRANTIES

7.1 In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to the Council and to any purchaser of the Goods from the Council that:

(a) at the time of Delivery the Goods will be new and unused (unless otherwise specified) and of merchantable quality, fit for the usual purposes for which they are intended and fit for any particular purpose that the Council makes known to the Supplier;

(b) at the time of Delivery the Goods will be free of all defects in material and workmanship;

(c) where the Council has supplied specifications and/or requirements, or specifications or requirements have otherwise been agreed, the Goods will comply with any such specifications and/or requirements;

(d) the Goods will, in all respects, meet all regulatory, legislative and codes or practice requirements that are applicable to the Goods under the laws of New Zealand and of such other country as may be relevant;

(e) in the case where the price of the Goods is able to be fixed by the Supplier that price shall not exceed the maximum price at which the Goods may be sold pursuant to law;

(f) at the time of Delivery the Goods will be Fully Operational;

(g) at the time of Delivery the Goods will be free of any security interest, lien or other encumbrance;

(h) it is the sole owner or duly authorised licensee of all Intellectual Property in the Goods and neither the Goods, nor the sale to or use by the Council, are in breach of any Intellectual Property rights of any third party;

(i) the Goods will be Delivered within a reasonable time of placing the Order where a time for Delivery is not specified in the Order; and

(j) the Supplier has obtained all the necessary rights and permits to supply the Goods to the Council.

7.2 The Supplier will not be responsible to any purchaser of the Goods from the Council for a breach of clause 7.1 which is due to an event occurring after Delivery of the Goods and which is outside of the Supplier's reasonable control.

7.3 In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to the Council, in respect of the supply of Services that:

(a) the Services will be carried out with reasonable care and skill and performed by persons with the requisite skill, experience and diligence;

(b) the Services, and any product resulting from the Services, will be fit for any particular purpose that the Council makes known to the Supplier, will comply with any standards required by the Council and will achieve the specified result;

(c) the Services will be Delivered within a reasonable time of placing the Order where a time for Delivery is not specified in the Order; and

(d) the Supplier will comply with all applicable legislation, regulation and industry codes of practice.

8 DEFAULT AND CANCELLATION

8.1 If the Supplier breaches any of the warranties contained in clause 7.1 or any other terms of the Terms of Purchase then at the sole option of the Council and without prejudice to any other remedy or right:

(a) the Council may reject the Goods in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense including (but not limited to) the cost of packing, transportation, insurance and handling the rejected Goods and the Supplier must immediately reimburse the Council for any monies paid in respect of the returned goods; or

(b) the Council may require the Supplier to replace, repair, or reinstate or re-supply the Goods at the Supplier's expense so they conform to the Terms of Purchase; 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) the Council may suspend payment for the Goods until the breach has been remedied.

8.2 If the Supplier breaches any of the warranties contained in clause 7.3 or any other terms of the Terms of Purchase then at the sole option of the Council and without prejudice to any other remedy or right:

(a) the Council may require the Supplier to perform the Services again to the required standard at the Supplier's expense or may have the Services re-supplied by another person and recover the cost of doing so from the Supplier; or

(b) the Council may suspend payment for the Services until the breach has been remedied.

8.3 The Council may terminate the Terms of Purchase or cancel any Order on 30 days' notice if the Supplier has breached any terms of the Terms of Purchase and failed to remedy the breach within seven working days after written notice has been given to the Supplier specifying the breach and requiring it to be remedied. Breach of any warranty by the Supplier can be treated by the Council as breach of the Terms of Purchase whether or not the Council elects to accept the Goods or Services.

8.4 The Council may, by notice to the Supplier terminate the Terms of Purchase or cancel any Order immediately if the Supplier becomes bankrupt, ceases business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with creditors under the Companies Act 1993.

8.5 No failure or delay on the part of the Council to exercise any of its rights in respect of any default under the Terms of Purchase by the Supplier will prejudice the Council's rights in connection with that default or any subsequent default.

8.6 If the Terms of Purchase is terminated or any Order is cancelled the Supplier will return to the Council all payments made. However, if upon cancellation the Council elects to keep or take any Goods it will pay for them but otherwise no compensation will be payable to the Supplier.

8.7 Termination of the Terms of Purchase or cancellation of an Order does not affect any responsibilities which are intended to continue or come into effect under the Terms of Purchase.

9 INDEMNITY

9.1 The Supplier and its officers shall indemnify and hold harmless the Council, its assigns, successors, servants, agents, customers or other persons against all or any claims, actions, suits at law or in equity and for all demands and damages in contract and/or (including negligence) tort by any person in respect of any loss, damage or injury caused by and/or arising from any defect or non-compliance of the Goods or Services supplied or in respect of any aspect of the performance or non-performance (as the case may be) of the Terms of Purchase or in respect of any other matter whatsoever.

9.2 Whether or not specifications and/or standards have been agreed or submitted by or to the Council for the purpose of concluding the Terms of Purchase it shall be the responsibility of the Supplier to ensure that the Goods or Services are satisfactory for the purpose for which they are

intended by the Council and the Supplier shall further indemnify the Council against defects and/or faulty workmanship of the Goods or Services supplied.

10 RELATIONSHIP BETWEEN SUPPLIER AND THE COUNCIL

10.1 Nothing in the Terms of Purchase should be interpreted as constituting either the Council or the Supplier, an agent, partner, or employee of the other and neither the Supplier nor the Council may pledge the credit of the other nor represent to anyone that:

(a) it is the other party;

(b) it is an agent, partner, or employee of the other party; or

(c) it has any power or authority to incur any obligation of any nature on behalf of the other party.

10.2 The Council's relationship with the Supplier is not exclusive, the Supplier is free to supply goods to other purchasers and the Council is free to purchase goods (including goods equivalent to the Supplier's) from other suppliers.

10.3 The Supplier acknowledges that where the Council acquires Goods or Services as a consumer (as defined in the Consumer Guarantees Act 1993), then that Act applies and the Council has the rights and remedies contained in that Act.

11 CONFIDENTIALITY

11.1 The Supplier undertakes that neither it nor its officers, employees, agents and/or subcontractors will divulge any of the Council's Confidential Information to any person (except as required by law), without the prior written consent of the Council.

11.2 The Supplier will not use the Council's name in advertising its business or activities without the prior written consent of the Council, and will comply with all reasonable terms and conditions upon which such permission may be given.

11.3 All Confidential Information provided by the Council will be and will remain the property of the Council, and the Supplier must:

(a) use the Confidential information only for the purpose of the Terms of Purchase and/or Order; and

(b) return the Confidential Information to the Council upon the Council's request at any time or if no request is made, upon completion or termination of the Terms of Purchase.

12 HEALTH AND SAFETY AND COUNCIL PROTOCOLS

12.1 The Supplier warrants that it and its workers, agents or representatives have complied and will comply with the Health and Safety at Work Act 2015 and all other applicable statutes and regulations connected with the supply of the Goods or the Services.

12.2 The Supplier warrants that it and any of its workers, agents or representatives will comply with all Council Health and Safety protocols, rules and regulations connected with the supply of Goods and Services.

13 INTELLECTUAL PROPERTY

13.1 Council acknowledges and agrees that it does not by this Terms of Purchase or will not otherwise have or acquire any Intellectual Property owned or used by the Supplier in connection with the Goods and or Services, whether or not such Intellectual Property is registered in any country.

13.2 The Supplier warrants that any Goods and or Services supplied by the Supplier will not infringe any Intellectual Property rights.

13.3 In the event of a breach of clause 13.2, the Supplier shall indemnify the Council for all claims and losses arising from the breach.

14 ASSIGNMENT AND SUBCONTRACTING

14.1 The Supplier may not assign or otherwise transfer any of the rights, benefits or obligations under the Terms of Purchase, without the prior written consent of the Council. A change in the management or control of 30% or more of the voting capital of the Supplier or the sale of the major part of its business or assets shall be deemed to be an assignment for the purposes of this clause and accordingly shall require Council consent.

14.2 The Supplier must not sub-contract or otherwise arrange for another person to discharge any of its obligations (excluding Delivery) under the Terms of Purchase without the prior written consent of the Council. The sub-contracting of any part of this Terms of Purchase by the Supplier shall not relieve the Supplier from any liability or obligation under the Terms of Purchase and the Supplier shall be responsible for the acts, defaults and negligence of any sub-contractor as if it were the acts, defaults and negligence of the Supplier.

14.3 The Council may assign the benefit of its interest under the Terms of Purchase to any person.

15. NOTICES

15.1 Any notice to be given under the Terms of Purchase must be in writing and must be delivered or sent by post or facsimile or e-mail, if to the Council to: Procurement Team Leader, Bay of Plenty Regional Council, PO Box 364 Whakatāne 3158 or if to the Supplier, to its registered office, or if the Supplier has no registered office, its usual address.

15.2 Any party to whom a notice is sent will be deemed to have received the notice:

(a) if sent by post, 4 business days after it has been posted;

(b) if sent by facsimile, upon its receipt as to which a confirmation slip or other confirmation of transaction will be adequate proof or receipt; or

(c) if sent by e-mail, upon receiving confirmation of receipt from the recipient.

16 INSURANCE

The Supplier will effect and maintain public liability insurance, professional indemnity/malpractice insurance and insurance against such other risk as Council may reasonably require in an amount not less than \$1,000,000 per claim, resulting from any act or omission on the part of the Supplier or any of its employees, agents or representatives and where reasonably required, Council's interest will be noted on any relevant policy.

17 DISPUTES

17.1 If there is a dispute between Council and the Supplier in relation to these terms of purchase or any matter arising from them, either the Supplier or the Council may notify the other specifying the matter in dispute. Following receipt of such notice the Supplier and the Council will in good faith in the first instance use best endeavours to resolve the dispute between themselves.

17.2 If the dispute can not be resolved by the Council and the Supplier, then the Supplier and Council must explore whether the dispute can be resolved by use of mediation or any alternative resolution method.

17.3 If the dispute is not settled within 60 days of the date of the notice under clause 17.1 then either the Supplier or the Council may refer the dispute to the courts.

17.4 Nothing in this clause 17, will prevent any party from seeking urgent injunctive relief.

18 INTERPRETATION

18.1 "**Confidential Information**" means information supplied by one party to the other relating to the business affairs of that party and may include research materials, trade secrets, any documents prepared in contemplation of the Terms of Purchase, and any know-how (including drawings, patterns, gauges, samples, and specifications) and the fact that the Terms of Purchase or Order exists.

"**Council**" means the Bay of Plenty Regional Council.

"**Delivery**" means, in the case of Goods, the delivery of the Goods in good order and condition to a location nominated by the Council and in the case of Services means the provision of the Services to the Council's satisfaction at a location nominated by the Council. "**Deliver**" has a corresponding meaning.

"**Fully Operational**" means in respect of a Good, that it (as a whole and, to the extent relevant, each of its components individually) meets any agreed specifications, meets relevant warranties under the Terms of Purchase, is capable of carrying out the required function in an efficient, accurate and timely manner to the capacity required for the Council's operations and is free of defects, adverse performance impediments and viruses.

"**Goods**" means the goods, materials or substances specified in the Order and all parts or components of those goods to be supplied by the Supplier to the Council.

"**Intellectual Property**" means all intellectual property and proprietary rights including all patents, trade marks, service marks, copyright, design rights, formulae, methods (including business methods), characteristics, equipment designs, technology, inventions (whether patentable or not), discoveries, know-how, experience, trade secrets and confidential information (and whether registered or unregistered).

"**Order**" means an official Council purchase order which may be placed with the Supplier from time to time containing a reference to these terms of purchase.

"**Purchase Order Number**" means the number supplied to the Supplier at time of the Order for that particular purchase.

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

"**Supplier**" means the person, firm, company or corporate entity to whom the Council issues an Order and/or with whom the Council enters into the Terms of Purchase.

18.2 Headings appear as a matter of convenience only and will not affect the interpretation of the Terms of Purchase.

18.3 The singular includes the plural and vice versa.

18.4 The Terms of Purchase is governed by New Zealand Law.