

CITY OF LAUNCESTON STANDARD TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS

"Contract" means the Purchase Order, these standard terms and conditions of purchase and any documents explicitly annexed to the contract documentation;

"Defective Deliverables" mean Deliverables that are reasonably determined to be defective by the CoL.

"Defect Liability Period" means the defect liability period stated in the Purchase Order, or where no period is stated, a period of 12 calendar months from acceptance of the Deliverables.

"Deliverables" means the goods, documents and services ordered by the CoL from the Seller as set out in the Purchase Order;

"Dispatch Documents" means delivery dispatch documents supplied with the Deliverables containing,

- (i) the CoL named as the customer
- (ii) the CoL Purchase Order number;
- (iii) comprehensive details of the quantities and items to be delivered.

"GST" means the tax provided for under *A New Tax System (Goods and Services Tax) Act 1999*.

"FIS" means Free into Store;

"IP" means the intellectual property rights attached to data, documents, trade secrets, trademarks, designs, patents and other such rights.

"Laws and Policies" means any statute, regulation, ordinance, permit, Australian Standard, licensing requirement, or other lawful requirement imposed by any competent authority. It also includes any notified CoL internal policy;

"CoL" means the City of Launceston;

"Purchase Price" means, unless agreed otherwise, the price stated in the Purchase Order including all costs of supplying the Deliverables FIS.

"Seller" means the supplier of the Deliverables ordered by CoL under this Contract;

These terms apply to the Launceston City Council, trading as the "City of Launceston". (CoL)

2. PURCHASE AND PURCHASE PRICE

- (a) The Seller agrees to sell, and the CoL agrees to buy the Deliverables for the Purchase Price in accordance with the Contract.
- (b) CoL will not accept any price escalation with respect to the Deliverables unless the relevant parties have agreed upon such escalation in writing prior to the delivery or completion due date for the Deliverables.
- (c) Acceptance of the Purchase Order is deemed to be acceptance of these CoL Standard Terms and Conditions of Purchase.

3. SUPPLY

- (a) The Deliverables must comply strictly with the Purchase Order. The Seller must notify the CoL immediately of any non-compliance with the Purchase Order.
- (b) Any Deliverables supplied by the Seller which do not comply with the Purchase Order may be returned to the Seller at the Seller's cost
- (c) If required by CoL, the Seller must allow and arrange for CoL to inspect any Deliverables before delivery or at any time during their manufacture.
- (d) The Seller must do whatever is required to comply with the Law and Policies.

4. DELIVERY & ACCEPTANCE

- (a) The Seller must provide Dispatch Documents to CoL by no later than the date of dispatch of the Deliverables.
- (b) The Deliverables must be delivered FIS to CoL's nominated delivery point;
 - (i) by the Delivery Date;
 - (ii) in accordance with any delivery instructions given by CoL;
 - (iii) packed and delivered in a manner which complies with all legal and applicable workplace health and safety standards.
- (c) Any costs incurred as a result of the Seller's failure to follow CoL's instructions in paragraph 4(a) of the Contract will be at the Seller's cost.
- (d) Acceptance of and payment for the Deliverables is subject to CoL authorized representative being satisfied with an inspection of the Deliverables. Matters to be considered include that;
 - (i) proof of delivery documentation is signed by an authorized representative of the CoL;
 - (ii) agreed quantity, quality, and user requirements have been fulfilled to CoL's satisfaction.

5. INDEMNITY

In addition to any other remedy that the CoL may have against the Seller, the Seller will indemnify and shall keep indemnified CoL from and against any cost, liability, loss or damage of any kind arising directly or indirectly from:

- (a) any accident, injury or damage to persons or property in connection with the use or sale of any Defective Deliverables;
- (b) the sale of any Deliverables which infringe any rights under the patent law or copyright;
- (c) any breach of any warranty or any of the terms and conditions of the Contract;
- (d) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
 - (i) the Deliverables;

(ii) the entry into, and the activities undertaken on and in, CoL's premises or works site by the Seller and/or the Seller's employees, agents, contractors and/or subcontractors;

- (e) any negligence or willful default by the Seller and/or any of the Seller's employees, agents, contractors and/or subcontractors in connection with this Contract;
- (f) any claim made against CoL by any of the Seller's employees, agents, contractors and/or subcontractors in respect of any contractual payment, industrial relations or employment law matter; and
- (g) any penalty imposed for breach of an applicable law in connection with the supply of the Deliverables by the Seller. The Seller's liability to indemnify CoL under this clause 5 will be reduced proportionally by the extent that a negligent act or omission of CoL, its employees or agents has contributed to the loss, damage, expense, injury, illness, death or other liability.

6. INSURANCE

- (a) Unless otherwise agreed in writing, the Seller must effect and maintain from the commencement of the contract until the expiry of the Defect Liability Period the following insurances:
 - (i) public and product liability insurance for an amount not less than \$10 million;
 - (ii) insurance for the Deliverables up to the time they are delivered and installed (if installation is required) for an amount not less than their replacement value;
 - (iii) if the Seller provides professional services, professional indemnity insurance for an amount not less than \$5 million;
 - (iv) workers' compensation insurance;
 - (v) third party property damage motor vehicle insurance for an amount not less than \$10 million;
 - (vi) any such other insurance and coverage which the CoL may specify in writing as appropriate or necessary for the Deliverables.
- (b) Any insurance policies required under this Contract shall include:
 - (i) The CoL; and
 - (ii) any other parties notified by CoL, as insured or interested parties to each of the respective insurance policies.
- (c) When required to do so, the Seller must provide the CoL with a copy of any policy of insurance, failing which the CoL may affect the required insurance at the cost of the Seller.
- (d) The Seller must notify the CoL immediately of any expiry of, or change to, any insurance policy.

7. SELLER'S WARRANTIES

The Seller warrants to the CoL that,

- (a) at all times during the term of the Contract: personnel carrying out the obligations under the Contract are suitably skilled, qualified, licensed, correctly inducted to CoL requirements, and exercise due skill, care and diligence;
- (b) the Seller has examined the Specifications and has determined that the Deliverables,
 - (i) are fit for the stated purpose;
 - (ii) are free of any defect in design, performance, workmanship or materials;
 - (iii) have been constructed or produced from new material of the highest quality available, and in any event to a quality equal to or exceeding the Specifications;
 - (iv) comply with all the Contract requirements.
- (c) The seller warrants that the Deliverables will not infringe or contribute to infringement of any letters of patent, registered design, authentic trademarks or copyrights in Australia.
- (d) The supply of "Dumped Goods" ie goods imported into Australia at less than their normal value, and causing or threatening to cause material injury to an Australian industry producing like goods will not be accepted by the CoL.
- (e) It is expected that the seller's whole of supply chain is conducted according to accepted legal, ethical, moral and environmental standards.

8. DEFECT LIABILITY

- (a) The Seller shall be responsible to the CoL, at the Seller's cost, for repair and replacement of any defect in the manufacture, material, workmanship, installation or testing of the Defective Deliverables for the Defect Liability Period.
- (b) During the Defect Liability Period, the Seller must, at the CoL's direction and within the time reasonably directed by the CoL:
 - (i) repair or, at the CoL's option, replace any Defective Deliverables;
 - (ii) re-supply or make good any Defective Deliverables; or
 - (iii) reimburse the CoL for any expenses the CoL incurs in sending back or making good any Defective Deliverables pursuant to clause (b)
 - (iv) including costs of repair and transport costs of return.
- (c) The CoL may exercise its rights under this clause 8 even if the CoL has accepted or paid for the Deliverables.
- (d) Any repaired or replacement Deliverables will be subject to the same warranty as the original Deliverables, from the date of repair or replacement.
- (e) The remedies provided in this clause 8 do not exclude CoL from pursuing any other remedies.

9. TERMS OF PAYMENT

- (a) The standard terms of payment of the Seller's invoice will be 30 days from the end of the month of invoicing for goods purchases, and 30 days from invoice date for all other

purchases, unless otherwise agreed to in writing, following (i) the receipt of a fully compliant invoice from Seller;

which shall include a reference to the specific CoL Purchase Order and/or contract number;

(ii) acceptance of the Deliverables by the CoL in accordance with this Contract.

- (b) Payment may be made by,
 - (i) transfer of funds into the Seller's nominated bank account, or
 - (ii) where the CoL deems it to be appropriate in the circumstances, such as an overseas transaction, by a letter of credit, bank guarantee, or any other recognized form of payment for a transaction of that kind.
- (c) Without prejudice to any other remedy, the CoL may reduce any payments by the amount of the Seller liability to the LCC for any costs, charges, damages or expenses arising under this Contract.
- (d) The Seller must be registered for GST.
- (e) Unless stated otherwise, all prices stated in the Contract are exclusive of GST.
- (f) All invoices for payment must be emailed to accounts@launceston.tas.gov.au

10. CONFIDENTIALITY

The Seller must keep confidential any information obtained during the performance of this agreement except for disclosure,

- (a) essential for the performance of the Contract obligations;
- (b) with the written approval of CoL;
- (c) required by law; or
- (d) to a professional adviser in the ordinary course of business, if the adviser agrees to comply with the obligations of this clause 11.

11. IP RIGHTS AND PRODUCT WARRANTIES

- (a) Where IP is created under this Contract, or the CoL provides the Seller with access to CoL IP, all such rights to this IP become or remain the property of the CoL.
- (b) The Seller must do anything reasonably necessary to preserve and secure the CoL's right, title and interest in the IP;
- (c) Where the Seller obtains from a third party a warranty in relation to any of the Deliverables, the Seller must ensure that the CoL benefit of that warranty held by the Seller or its subcontractors.

12. DISPUTE RESOLUTION

- (a) If any dispute arises in relation to this Contract ("Dispute"), then either party may give the other party a written notice setting out the nature of the dispute ("Notice of Dispute").
- (b) Each party's representative(s) must meet within 21 days after the date of receipt of the Notice of the Dispute to seek to resolve the dispute in good faith.
- (c) Where the Dispute is not resolved within 21 days of it being referred for resolution, the Dispute may be referred for arbitration by either party.
- (d) The parties are not to commence litigation while a Dispute is being dealt with in accordance with this clause 12.

13. GENERAL

- (a) Unless agreed otherwise in writing, the Contract is a record of the entire agreement between the parties.
- (b) Unless agreed otherwise, where any ambiguity or conflict exists in any contract documentation for the purchase of these Deliverables, the following order of precedence shall apply,
 - (i) any unexpired prior written contractual agreement executed by both parties,
 - (ii) the issued Purchase Order, then
 - (iii) these Standard Terms and Conditions of Purchase.
- (c) A reference to "\$" or an amount of money shall be a reference to that amount in Australian dollars.
- (d) Any notice or other communication to be given by a party to another party under this Contract must:
 - (i) be in writing;
 - (ii) give the address of recipient as set out in this Contract or as revised by notice from the relevant party;
 - (iii) be left at or sent by prepaid/registered post to that address or sent by facsimile; and
 - (iv) be deemed to be served:
 - (a) on the day of delivery; or
 - (b) 3 days (if sent within Australia) or 7 days (if sent outside Australia) after the date of posting by prepaid; or
 - (c) on the date recorded on the transmission report if sent by facsimile or the next business day if outside of business hours.
- (e) The Seller shall comply with any of the CoL's reasonable instructions including, supplying necessary documents, obeying signs, conducting site inductions and safety assessments, reporting safety incidents, and cooperating with CoL safety or fraud investigations.
- (f) Nothing in this agreement shall be construed as creating a relationship in the nature of employment, partnership or joint venture.
- (g) If any clause or part of a clause is rendered void or unenforceable, then that clause or part of the clause shall be severed from the balance of this Contract without affecting the validity of the remaining provisions
- (h) This Contract is subject to the laws of Tasmania.