

Purchase Order general terms and conditions for the supply of goods and services

1. General

All additions and alterations to these general terms and conditions (**General Conditions**) shall be in writing and attached as special conditions (**Special Conditions**) to the Contract. In the event of any inconsistency between these General Conditions and any Special Conditions, the latter shall prevail.

2. Price basis

The price stated in the Purchase Order is firm subject to any Special Conditions. Prices shall include customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery (Free-in-Store), insurance, Goods and Services Tax where the Contractor is registered for GST, and any other applicable costs and charges.

The Contractor shall issue Bega Valley Shire Council (**BVSC**) with a valid tax invoice in accordance with a New Tax System (Goods and Services Tax) Act 1999, (the GST Act).

The Contractor is entitled to recover from BVSC the amount of any GST payable on taxable supplies, within the meaning of the GST Act, provided under this Contract.

3. Payment of accounts

BVSC standard terms of payment are 30 days from acceptance of the Goods and Services and receipt of a correctly rendered tax invoice. This may be varied where BVSC accepts a discount offered by the Contractor for earlier payment.

4. Performance of the Contract

The Contractor shall deliver the Goods and provide the Services at the time and place specified in the Purchase Order. The Contractor shall ensure that the Goods and Services comply with all of the General Conditions and Special Conditions of the Contract.

Variations to the Contract must be in writing.

Goods

All Goods shall be new and comply with the highest relevant commercially accepted standards and be fit for purpose unless varied by a Special Condition.

BVSC will be deemed to have accepted Goods on notifying the Contractor that they are accepted, or if 14 days has passed since delivery without BVSC rejecting the Goods. BVSC may reject, Goods that are faulty or do not fully comply with this Contract, and retains the right to do so after acceptance, if the Goods are found to be faulty or not in accordance with the Contract after acceptance. The Contractor shall make good or replace these Goods at no additional cost, including removal and incidental costs, within the time specified by BVSC.

Services

The Contractor warrants that it will render the Services with due skill and care, and that materials supplied in connection with the Services will be fit for purpose.

If there is a defect in performance of the Services or they are incomplete, BVSC may, by notice, require the Contractor to remedy the defect in performance, complete the Services, or re-do the Services at no additional cost to BVSC. The Contractor has 30 days from the date of the notice to comply.

5. Termination

BVSC may terminate the Contract in whole or in part when the Contractor:

- has not remedied a breach notified to the Contractor within the time specified in the notice of breach;
- becomes bankrupt or insolvent;
- is unable to complete its obligations under the Contract;
- assigns or enters into a subcontract in respect of this Contract without the prior approval of BVSC;
- breaches a term of this Contract which specifically states that a breach gives BVSC a right to terminate

6. Warranties

The warranty commences on the day of delivery or acceptance of the Goods and Services, whichever occurs last. It shall be valid for 90 days, or the length of the Contractor's or Manufacturer's standard warranty period, whichever is longer. The conditions and the period for completing warranty work that apply are the same as for the remedial work in Clause 4.

7. Assignment/subcontracting

The Contractor must obtain the prior written approval of BVSC to assign or subcontract the Contract or any part thereof. Approval to assign or subcontract shall not relieve the Contractor from any of its obligations under the Contract, or impose any liability upon BVSC to an assignee or a subcontractor.

8. Title, acceptance and risk

Title to the Goods vests in BVSC when BVSC accepts or is deemed to have accepted them. The risk of any loss or damage to the Goods remains with the Contractor until acceptance by BVSC.

9. Notices

All notices, requests, variations, and other communications by both parties are to be in writing and delivered promptly by hand deliver or pre-paid post, or facsimile, to the appropriate addresses named in the Purchase Order.

10. Existing Contracts and standing offers

Where this Contract is issued under the terms of a standing offer or to extend the terms of an existing contract, the terms of that standing offer or existing contract shall prevail over the General Conditions of this Contract, but not over the Special Conditions.

11. Indemnity

The Contractor indemnifies and keeps indemnified BVSC against all loss of or damage incurred or suffered by BVSC and from and against any claim, demand, action, cost or expense (including reasonable legal costs), suit or proceeding that may be made or brought by any person against BVSC or employees, professional consultants or agents of BVSC arising out of or in connection with the sale or delivery of the Goods or the supply or provision of the Services by the Contractor or its employees, agents or sub-contractors (**Claim**) and also from any costs and expenses that may be incurred in connection with any such Claim.

Notwithstanding above, the Contractor will not be liable for personal injury to or the death of any person or loss of or damage to property resulting from any material breach by BVSC of any provision of the Contract or any gross negligent act or omission of BVSC, or its employees or agents.

12. Waiver

No forbearance, delay or indulgence by BVSC in enforcing the provisions of the Contract shall prejudice, restrict or limit the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

13. Applicable Law

The Contract shall be governed by NSW Law and all disputes which may arise relating to or arising out of the Contract shall be submitted to dispute resolution.

14. Patents, trademarks, Copyrights and Registered Designs

The Contractor warrants that neither the supply of the Goods and Services by the Contractor or their provision or use by BVSC will infringe any Intellectual Property Right of any person, and the indemnity in clause 12 applies to any Claim arising out of a breach of this warranty.

15. Insurance

The Contractor must take out and maintain:

- a Workers Compensation insurance policy in respect of its employees;
- where the Contractor is providing Goods & Services to BVSC, the Contractor must take out and maintain public liability insurance for at least \$20 million covering BVSC and the Contractor and naming BVSC; and
- such other insurances notified to the Contractor by BVSC

The Contractor must provide a current copy of all required insurance policies prior to taking any action under the Purchase Order and Contract.

Failure to submit this documentation may result in termination of the contract. BVSC against all claims of loss or injury arising from the delivery of the good or the BVSC.

16. Environmental consideration

BVSC is committed to local environment controls and safeguards to protect the built and natural environment. The contractor will be required to effect adequate controls in accordance with statutory requirements to ensure protection of the environment.

17. Risk Management, Work Health & Safety and Compliance with Laws

The Contractor must comply with all relevant obligations under the *Work Health and Safety Act 2011*, *Work Health and Safety Regulation 2011* and *Protection of the Environment Operations Act 1997* and must comply with all other Laws..

18. Government Information (Public Access) Act

18.1 Access to Information (GIPAA s.121)

- a) The Contractor must, within 7 days of receiving a written request by BVSC, provide BVSC with immediate access to the following information contained in records held by the Contractor:
 - i) information that relates directly to the performance of the services provided to BVSC by the Contractor pursuant to the Contract;
 - ii) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the services pursuant to the Contract; and
 - iii) information received by the Contractor from BVSC to enable it to provide the services pursuant to the Contract.
- b) For the purposes of sub-clause (a), information does not include:
 - i) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
 - ii) information that the Contractor is prohibited from disclosing to BVSC by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - iii) information that, if disclosed to BVSC, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to BVSC, whether at present or in the future.
 - iv) the Contractor will provide copies of any of the information in sub-clause (1), as requested by BVSC, at the Contractor's own expense.
- c) Any failure by the Contractor to comply with any request pursuant to sub-clause (a) or (b) will be considered a breach of an essential term and will allow BVSC to terminate the Contract by providing notice in writing of its intention to do so with the termination to take effect 7 days after receipt of the notice. Once the

Contractor receives the notice, if it fails to remedy the breach within the 7 day period to the satisfaction of BVSC, then the termination will take effect 7 days after receipt of the notice.

18.2 Consultation (GIPAA s.54)

- a) BVSC will take reasonably practicable steps to consult with the Contractor before providing any person with access to information relating to the Contract, in response to an access application under the Government Information (Public Access) Act 2009 (GIPA Act), if it appears that:
 - i) the information:
 - includes personal information about the Contractor or its employees;
 - concerns the Contractor's business, commercial, professional or financial interests; or
 - concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or
 - concerns the affairs of a government of the Commonwealth or another State (and the Contractor is that government);
 - ii) the Contractor may reasonably be expected to have concerns about the disclosure of the information; and
 - iii) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- b) If, following consultation between BVSC and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 days of the conclusion of the consultation process.
- c) In determining whether there is an overriding public interest against disclosure of government information, BVSC will take into account any objection received by the Contractor.
- d) If the Contractor objects to the disclosure of some or all of the information but BVSC nonetheless decides to release the information, BVSC must not provide access until it has given the Contractor notice of BVSC's decision and notice of the Contractor's right to have that decision reviewed.
- e) Where BVSC has given notice to the Contractor in accordance with sub-clause (d), BVSC must not provide access to the information:
 - i) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - ii) where any review of the decision duly applied for is pending.
- f) The reference in sub-clause (e)(i) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

19. Definitions

Contract means the Purchase Order, these General Conditions and any Special Conditions.

Contractor means the party identified as such in the Purchase Order.

Goods means the goods, if any, described on the Purchase Order.

GST has the meaning given to that term under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

'Intellectual Property Right' means rights to any of the following (whether registered or unregistered): trade marks, logos, service marks, trade names, business names, copyright, designs, patents, inventions, processes and other technical know-how and other rights in industrial property and applications for them and licence agreements or other arrangements under which a person has the right to use any of the foregoing.

Law means:

(a) Commonwealth, State and Local government legislation including regulations, by-laws, orders, awards and proclamations;

(b) common law and equity;

(c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and

(d) guidelines of Authorities with which the Contractor is legally required to comply.

Purchase Order means the purchase order for Goods and/or Services issued by BVSC to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services.

Services means the services, if any, described on the Purchase Order.

STANDARD CONTRACT

General delivery requirements

Suitable and adequate packaging to be used for each material and all materials to be received in good condition.

Delivery dockets to show

Quantity, description and name of material. -Correct BVSC Purchase Order Number. - Delivery Docket Number and date (separate number for each delivery)

Invoices

All invoices must be complying Tax Invoices quoting:-

1. BVSC as the customer, and our Australian Business Number.

2. The Supplier's ABN.
3. The GST inclusive price of the taxable supply.
4. The date of the Tax Invoice.

Open/flat-top truck deliveries

To be covered in order to avoid loss or damage during transport unless otherwise specified in the Contract.

Bagged deliveries

Each bag to be marked with:

1. Name of material.
2. Net weight per bag in kilos.

An agreed fixed quantity per pallet and standard palleting pattern on every delivery.

Drummed deliveries

Side of each drum to be marked with:

1. Name of material.
2. Name of supplier.
3. Drum deposit and value if applicable.

Side or top of drum to be marked with net weight (or net volume) and if possible tare and gross weight per drum in kilos.

Pallets

Pallet weight not to exceed 1,200kg per pallet.

Hazardous Materials

To be clearly identified. If insufficient warning is shown, goods may be rejected. (All hazardous materials are to be supplied with Material Safety Data Sheets).

Safety

All goods supplied must comply with the relevant Australian Standards and have WorkCover NSW Approvals where applicable. All goods must be supplied with safety instructions and Material Safety Data Sheets with respect to any chemical product.