

## **Purchase Order (P.O.) - General Terms for Goods or Services**

- The Buyer:** The Dunedin City Council (DCC), 50 The Octagon, Dunedin 9016
- The Supplier:** The individual or organisation named on the DCC Purchase Order to deliver the goods and/or services referred to on the purchase order.
- Agreement:** The Buyer appoints the Supplier to deliver the Goods and/or Services described in the DCC Purchase Order and the Supplier accepts that appointment.
- Application:** These general terms will apply between the DCC and the Supplier where no other formal contract for the goods or services has been executed.
- If there is an executed contract, these general terms do not apply.
- NB.** If the price of the goods/services is above NZ\$50,000.00 then the DCC is mandated to execute a formal contract and neither the DCC nor the Supplier should rely on these general terms.

**1. Delivery/Price:** The Supplier will deliver the good/services ordered by the DCC in the manner, time and for the price agreed/specified to satisfy the DCC's requirements. Prices are all GST Exclusive unless specified otherwise. The Supplier will keep the DCC informed about delivery whenever necessary and provide reports and/or documentation as agreed.

**2. Variations:** The DCC may vary or cancel any of its requirements for any goods or services prior to completion of delivery. The Supplier will accommodate variations by the DCC. Fair adjustments will be made to prices and delivery requirements due to variations by the DCC. The Supplier must provide the DCC a written request for adjustment within three (3) business days of each variation; thereafter no increase adjustment will be made. The DCC will not be liable for any cancellation.

**3. Compliance:** The Supplier will ensure that all goods/services are:

- a) designed, manufactured, delivered and operates in compliance with applicable user requirements, specifications and standards; and
- b) compatible with each/any system that it will be used with.

**4. Standards/Quality Assurance/Health and Safety:** The Supplier must ensure that it and its representatives:

- a) perform using due diligence, care and skill, using sufficient appropriately trained, qualified, experienced and supervised persons; and
- b) have and comply with standards, health and safety requirements and a quality assurance system approved by the DCC. If a standard is not specified, then it will be the best standard in the applicable profession/industry.
- c) Comply with the DCC supplier code of conduct -  
[https://www.dunedin.govt.nz/\\_data/assets/pdf\\_file/0011/759854/Supplier-Code-of-Conduct.pdf](https://www.dunedin.govt.nz/_data/assets/pdf_file/0011/759854/Supplier-Code-of-Conduct.pdf)

The DCC may observe the delivery of the goods/services. The Supplier will (if reasonably requested to do so by the DCC) end the involvement with DCC of any of its representatives to the extent reasonably required by the DCC (e.g., due to health and safety, security or misconduct reasons).

**5. Access:** Subject to the DCC's health and safety, security, operational and documentation requirements, the DCC will allow the Supplier's representatives access at reasonable times to relevant property as necessary for the delivery of the goods/services. The Supplier will ensure that its representatives co-operate with other persons and do not restrict any other activities during access and generally when performing this contract. The Supplier will minimise disruption and promptly tidy-up and make-good any damage or problems it causes.

## **6. Operational Requirements:** The Supplier will:

- a) except where supplying goods only, secure and maintain DCC Approved Contractor status for Health and Safety
- b) itself and ensure each of its representatives and visitors, comply with the DCC's health and safety, security, operational and documentation requirements and with applicable law;
- c) have and comply with its own appropriate health and safety plan, and promptly notify the DCC:
  - i. if any hazard exists at relevant properties of the DCC due to the Supplier's representatives or visitors; and
  - ii. of any accident or serious harm that occurs to, or is caused by, the Supplier's representatives or visitors at relevant properties of the DCC;
- d) not allow any unauthorised activity, discharge of any contaminant, or making of excessive noise, by any of its property, representatives or visitors at relevant properties of the DCC;
- e) not supply any ozone depleting or hazardous substance to the DCC without having the necessary exemption; and
- f) properly label and package every dangerous good and other hazardous substance it delivers to the DCC and mark the good with a prominent warning and provide a Material Safety Data Sheet.

**7. Insurance:** It is the Supplier's responsibility to ensure its risks of doing business are adequately covered, whether by insurance or otherwise. If requested in the DCC Purchase Order, the Supplier must have the insurance specified and the Supplier must provide a certificate confirming the nature and level of the insurance cover.

## **8. Intellectual Property:** Ownership of Intellectual Property Rights:

- a) Pre-existing Intellectual Property Rights remain the property of their owner.
- b) New Intellectual Property Rights in the goods/services become the property of the DCC when they are created, and the Supplier agrees to do all things necessary to give effect to this clause.
- c) New Intellectual Property Rights that are not in the deliverables will become the property of the Party that created them.
- d) The Supplier grants to the DCC a perpetual, non-exclusive, worldwide, transferable, sub-licensable and royalty-free licence to use, for any purpose, all Intellectual Property Rights in the deliverables that are not owned by the Buyer to:
  - receive the full benefit of the goods/services and deliverables, and
  - use, copy, modify and distribute the deliverables.
- e) The Supplier warrants that it is legally entitled to grant the licence in this clause and the DCC's use of anything provided by the Supplier and incorporated in the goods/services and deliverables, for the purposes communicated to, or that are or ought to be known by, the Supplier, will not infringe the rights, including Intellectual Property Rights, of any third party.

## **9. Documentation/Training:** The Supplier will supply, with the goods/services;

- a) appropriate documentation in English and a reasonable amount of training to enable the DCC to install, operate and maintain goods/services, as necessary.
- b) updates of that information as it becomes available. The DCC may freely copy any relevant information for use by the DCC.

**10. Acceptance:** The DCC may carry out any reasonable or agreed acceptance test of any goods/services, component and related system. The Supplier will assist and promptly remedy any acceptance test failure at its cost. Warranty identification labels are to be attached by the Supplier and dated on completion of each servicing or supply.

**11. Payment:** Payment of approved invoices will be made by the DCC to the Supplier by the 20th business day of the month following the month of invoice.

- a) Invoices should be submitted to the DCC and dated on the last day of the month for goods/services delivered in that month.
- b) Supplier invoices must be received by DCC on or before the 3rd business day of the month following the month of invoice to be considered for payment in that month.
- c) The DCC may set-off any amount that is or may become payable by it to the Supplier against any amount that is or may become payable by the Supplier to the DCC.

**12. Title:** Where the DCC is buying goods or the output of a service/services, clear title passes to the DCC on delivery whether or not payment has been made.

**13. Risk:** Every risk to the goods/services remains with the Supplier until completion of delivery and acceptance, except when within the DCC's possession and control. The Supplier's representatives and anything involved in delivery are provided at the Supplier's every risk and cost.

**14. Support:** The Supplier will ensure that the DCC has access to the prompt supply of appropriate support (e.g., spares, maintenance services) on a reasonable basis throughout the expected life of the goods/services.

**15. General Warranties:** The Supplier assures the DCC that:

- a) all goods (and components) supplied by the Supplier will be new and unused on delivery, and if a shelf-life or calendar-life (by time, not utilisation) or a utilisation-life is applicable, at least 95% of each of those lives remain on delivery;
- b) all goods/services supplied by the Supplier will conform as to design, quality, quantity, configuration, functionality, the samples (if any) and specifications provided to the DCC;
- c) all goods supplied by the Supplier will be appropriately packaged, packed and securely stored until completion of delivery and installation by the Supplier (if applicable) to minimise damage, deterioration and theft;
- d) where applicable, all goods/services will be properly installed and integrated into, and will be compatible with and will not damage, the DCC's relevant systems and other property;
- e) despite anything said or done by the DCC, all goods/services supplied by the Supplier will for the specified warranty periods, or to the extent not specified, for at least 12 months from the later of the date of acceptance and the date of commencement:
  - i. be fit for the expected use and purpose; and
  - ii. be free from any defect (including any latent defect) in design, materials, workmanship and title;
- f) ownership, possession, modification, use or resale of any goods/services supplied by the Supplier will not infringe any third-party rights and the Supplier will protect and completely indemnify the DCC from any infringement claim or proceeding;
- g) no form of inducement or reward has been or will be directly or indirectly provided to any of the DCC's representatives.

These are additional to any other assurances given by the Supplier or implied by custom or law. The Supplier will, to the extent possible, pass on to the DCC the benefit of any warranty or other assurance from any other person in respect of all goods/services supplied to the intent that the DCC may have recourse against those persons through the Supplier.

**16. Warranty Claims:** The Supplier will promptly remedy each warranty claim to the DCC's satisfaction. The DCC may require repair or replacement solutions and a temporary solution while the claim is being remedied. Components replaced or upgraded within a warranty claim will not be charged to the DCC. If a hard drive is not repairable at DCC property, the DCC may retain or destroy it without charge for security reasons. Warranty periods are suspended while each claim is being remedied, and then start again for the remaining warranty period on completion of remedying each defect.

**17. Compliance with Laws/Authorisations:** The Supplier:

- a) will ensure it, and all goods/services prior to acceptance, comply with all New Zealand, and each relevant jurisdiction's, laws, codes and standards; and
- b) is responsible for ensuring that every necessary and prudent authorisation is obtained to ensure that it can perform this contract and the DCC can at all times own (where intended) and freely possess, modify, use and resell unrestricted, each good and output of all goods/services supplied by the Supplier.

**18. Failure by Supplier:** If the Supplier:

- a) breaches, or fails to properly or promptly perform, any of its obligations and fails to remedy the situation to the DCC's satisfaction within two (2) working days after notice from the DCC of the breach or failure;
- b) is or becomes insolvent or bankrupt, or is in or goes into receivership or liquidation; or
- c) has a change of control or ownership, or a conflict of interest with the DCC's interests, which the DCC considers sufficiently inappropriate;

**the DCC may:**

- d) suspend or cancel this contract (in whole or in part) by written notice to the Supplier; and/or
- e) have the requirement performed by its own personnel or anyone else and recover damages from the Supplier.

**19. Indemnity:** The Supplier will promptly make good and protect the DCC and its representatives from any damage, problem, claim or proceedings the Supplier causes in relation to this contract including any third-party claim made against the DCC.

**20. DCC Liability Limited:** To the extent allowed by law, the DCC will not be liable (in contract or tort, including negligence or otherwise) to the Supplier for any indirect damage, loss (including loss of profits or business) or cost caused or contributed to by the DCC, any of its representatives or visitors in relation to this contract. Each of the DCC's representatives is also to enjoy the benefit of this provision.

**21. Confidentiality:** The DCC and the supplier agrees to not use or disclose the other Party's Confidential Information to any person or organisation other than:

- a) to the extent that use or disclosure is necessary for the purposes of providing the goods/services or deliverables or, in the case of the DCC, using the goods/services or deliverables.
- b) If the other Party gives prior written approval to the use or disclosure.
- c) if the use or disclosure is required by law (including under the Official Information Act 1982), Ministers, parliamentary convention or any other regulation, rules or policy that is binding on that Party, or
- d) if the information has already become public, other than through a breach of the obligation of confidentiality by one of the Parties.

**22. No Assignment/Subcontracting:** The Supplier may not assign or subcontract any of its benefits or burdens in respect of this contract without the DCC's written consent. The Supplier will keep the DCC informed about the involvement of subcontractors on a fully transparent basis and ensure each subcontract has passed through provisions allowing the DCC to directly benefit from and enforce it. Any subcontract supplier or contractors must also obtain and maintain DCC Approved Contractor status for Health and safety.

**23. Relationships:** Nothing in this document creates or evidences any legal partnership, joint venture, agency or employer/employee relationship between the parties. Neither Party has authority to bind or represent the other Party in any way or for any purpose.

**24. Waiver:** No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.

**25. Disputes:** If a party believes there is a dispute, it will promptly notify and give written details to the other party. If the dispute is not resolved within 10 working days by senior representatives of the parties, it will be promptly submitted to arbitration if requested in writing by the DCC.

**26. Governing law:** New Zealand law governs. New Zealand courts have non-exclusive jurisdiction.

**27. Interpretation:** Unless the context otherwise requires, or it is specifically otherwise stated:

- a) “goods” and “services” include any form of deliverable;
- b) if the Supplier comprises more than one person, each of those person’s liability to the DCC is joint and several;
- c) references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- d) amounts are in New Zealand dollars; and
- e) time is of the essence.