



TERMS AND CONDITIONS OF CONTRACT

This document contains the Conditions of Contract referred to in the Purchase Order provided by Council. The Contractor acknowledges that they have read and understood the Conditions of Contract set out in this document / website and accepts the Conditions of Contract as binding, on the acceptance of the Purchase Order.

1. Contract

These conditions together with any specifications provided by Council in connection with the supply of the goods or material ("the Specification") and the purchase order shall constitute the contract documents and the entire terms of the agreement.

2. Definitions

In this Contract, unless something else is clearly indicated:

- a. **Contract** means these Conditions of Contract for supply of services, goods and materials
- b. **Contractor** means the Contractor named in the Purchase Order and includes its employees and agents
- c. **Council** means the City of Holdfast Bay and its employees and agents
- d. **GST** has the same meaning it does in A New Tax System (Goods and Services Tax) Act 1999.
- e. **Liabilities** means all liabilities, damages, remedies, losses, penalties, fines, costs, expenses, demands, claims and proceedings of any nature
- f. **Purchase Order** means the purchase order completed by the Council requesting the supply of the services or materials by the Contractor
- g. **Price** means the amount payable by the Council to the Contractor for the supply of the goods or services specified in the Purchase Order
- h. **General Interpretation:** Unless otherwise provided all references to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements quantities, dimensions and units shall be in terms of the Commonwealth legal units.

3. The General Scope of Contract

This contract requires the Contractor to:

- a. Supply goods or materials of description, nature, specification, quantities and sizes and at the price specified in the Purchase Order.
- b. Supply services of description, nature, specification and in the manner requested by Council. Services must be provided at such time and place as described in the Purchase Order, and be provided by qualified and experienced personnel with due care and skill. Services must be provided at the price set out in the Purchase Order.
- c. The supply of goods or services must comply with all applicable Legislative requirements. The Contractor indemnifies the Council against any liabilities arising out of the Contractors failure to comply with this Clause 3c.

4. Quality

The quality of the Materials delivered or services provided shall not differ from that specified in the Purchase Order unless the change in quantity is ordered by the Council in a written form specifically referring to the amendment of the quality.

5. Subcontractors

The Contractor shall not engage Sub-contractors to perform any of its obligations under the contract without prior written approval of the Council.

6. Delivery

- a. Delivery shall be made to such locations at such times as shall be nominated by the Council.
- b. Upon delivery, the Materials shall be accompanied by a delivery document with the Council's order number specified.
- c. An invoice shall be emailed to accountpayable@holdfast.sa.gov.au within three (3) days of delivery which shall state clearly the contents of the delivery.
- d. The price shall be inclusive of all freight insurance and other charges connected to forwarding the Materials to Council.
- e. All elements of the materials delivered by the Contractor shall be at the risk of the Contractor. No liability to pay for Materials shall arise until that element of the Materials are approved by the Council and delivery is accepted in writing or by countersignature.
- f. Upon return of any such element of the materials which is not acceptable to the Council, the Contractor shall reimburse the Council for:
 - i. Any amounts paid by the Council on account of the Price of the returned elements of the Materials, and
 - ii. Any costs incurred by the Council in connection with the delivery or return of the relevant element of the returned materials.

7. Invoicing and Payment

- a. The Council will pay the Price to the Contractor within 30 days of receipt of a Tax Invoice (depending on whether the Contractor is registered for GST).
- b. The invoice must be emailed to accountspayable@holdfast.sa.gov.au
- c. The invoice must quote the Australian Business Number, identify the amount of GST (if registered for GST) and identify the Purchase Order number.
- d. Payment will be made on the condition that the materials are supplied and the Services are provided in the manner set out in the Contract Documents.

8. Acceptance of Goods

The Council shall only be obliged to accept delivery of such materials that comply with the Contract Documents. If the delivery of the Materials does not comply in any respect, the Contractor shall, if so required by the Council, remove all such rejected elements of the materials and replace the same with a delivery of the Materials acceptable to the Council. All freight, insurance and other charges whatsoever in connection with the return of that element of the Materials wrongly supplied and the delivery of a further supply of the materials shall be paid and borne by the Contractor.

9. Testing

- a. The Council may require, as a condition of delivery or any element of the Materials, the Contractor to supply a sample of the relevant Materials for testing and approval by the Council. In the event that such a sample is produced, delivery of the materials must be to the same size and nature and quality consistent with that of the approved sample.
- b. The Council may monitor the Contractors performance of the services. If the Council is dissatisfied with the Contractors performance, the Council may:
 - i. Request that the Contractor at its cost provide the services to the satisfaction of Council
 - ii. Procure the services from a third party and set off the cost of procuring the services from the third party and the cost of monitoring the Contractors performance of the services pursuant to this contract.

10. Set off

The Council is entitled to deduct from amounts otherwise payable to the Contractor by the Council any amount due from the Contractor to the Council pursuant to the terms of this contract.

11. Property in the Materials

When any part of the entire payment for any element of the Materials is made by the Council the entire title of the property shall pass without exclusion or limitation but subject to the Council's right to subsequent rejections in the event that the relevant element of the Materials is discovered to not comply with the terms of the Contract Documents.

12. Variation

Any variations to the Purchase Order must be in writing and signed by both the Council and the Contractor.

13. Warranty

- a. The Contractor warrants that it has full power to enter into the Contract and perform its obligations under the Contract Documents.
- b. The Contractor warrants in addition to any warranty or guarantee implied by law, that all of the Materials delivered to the Council:
 - i. Will conform to the relevant description contained in the Contract Documents;
 - ii. Shall be of good merchantable quality and for the known purpose for which it is sold;
 - iii. Are new (unless otherwise specified);
 - iv. Are free from all liens and encumbrances and the Contractor has a good marketable title thereto;
 - v. shall be delivered by the due delivery date specified on the Purchase Order.
- c. The Contractor warrants that:
 - i. In the supply of services it will not do any act, matter or thing prejudicial to the goodwill, commercial reputation or public image of the Council;
 - ii. It will supply the services with all due care and skill in accordance with any legal requirements.

14. Indemnity

The Contractor indemnifies and will keep indemnified the Council with respect to any liabilities of any kind whatsoever resulting from or connected with the Contractor's supply of services or materials to the Council, including those arising out of or in connection with the breach of the Contract Documents by the Contractor, or any act or omission of the Contractor, its employees, contractors or agents.

15. Legal Relationship

The Contractor will at all times remain an independent contractor of the Council and at no time is to be construed as an employee of the Council.

16. Jurisdiction

The laws in force in the state of South Australia shall apply to this contract and the parties shall submit to the jurisdiction.

17. Assignment

The Contractor shall not, without the prior written approval of the Council, assign the Contract or assign, mortgage, charge, encumber any of the moneys payable under this Contract.

18. Part Acceptance of Order

Where the Council has accepted an element of the materials that constitute part of a "Materials Request" the Council shall pay the Contractor that part of the purchase attribute to that element of the Materials accepted.

19. No Waiver

No failure or delay on the part of a party to exercise any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy preclude any other further exercise therefore or exercise of any right or remedy.

20. Special Conditions

Any special conditions that the Council shall incorporate on the Purchase Order shall be incorporated into this Contract and in the event of any inconsistency with the terms of this Contract the special conditions prevail.

21. Time of the Essence

Time shall be of the essence as regard to any date or period under this contract.

22. Work Health and Safety

- a. The Contractor must comply with the Work Health and Safety Act 2012 (SA), any regulations made under it and the Council's Work Health and Safety Policy, including the implementation of safety requirements and a safe system of work.
- b. Prior to the commencement of any work the engaged contractor must ensure that the appropriate steps are taken by those who control and do the work, to identify all reasonably foreseeable hazards associated with or incidental to the contracted work and worksite.
- c. Assessment of risk must be made of an identified hazard, and, on the basis of that risk assessment, control measures must be put in place to eliminate or minimise any risk. A record of the outcome of that process is to be made to Council upon request.