



**CUMBERLAND  
CITY COUNCIL**

**General Terms and Conditions for  
Supply of Goods & Services**

# Terms and Conditions of Purchase Order

The Council has requested and the Supplier has agreed to supply the Goods in accordance with the terms and conditions of this Purchase Order.

## 1. Defined Terms

In this Purchase Order:

**'Purchase Order'** means the agreement between the Council and the Supplier comprising the following documents:

- (a) the purchase order with its individual purchase order number, detailing the Goods and Fee, and attached to these purchase order terms and conditions; and
- (b) these purchase order terms and conditions, which supersedes any prior terms and conditions provided by the Supplier but does not supersede any prior terms and conditions executed via a formal instrument of agreement and provided by the Council to the Supplier.

**'Delivery Address'** means 16 Memorial Avenue, Merrylands, NSW 2160.

**'Delivery Date'** means the date specified in the Purchase Order.

**'Fee'** means the fee specified in the Purchase Order.

**'Goods'** means the goods and/or services specified in the Purchase Order.

**'GST'** means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended.

**'Heavy Vehicle'** means a vehicle defined as a "heavy vehicle" or a "fatigue related heavy vehicle" by sections 6 and 7 of the Heavy Vehicle National Law Act 2012 (QLD).

**'Legislative Requirement'** means:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory;
- (b) codes, standards, certificates, licences, consents, permits, approvals and requirements of organisations, including the requirements of any authority, and the requirements of any approvals;
- (c) Australian Standards and the Building Code of Australia and any other relevant standards;
- (d) the Codes of Practice of the State or Territory and other appropriate codes; and
- (e) fees and charges payable in connection with the foregoing,

as amended, replaced or updated from time to time.

**'PPSA'** means the *Personal Property Securities Act 2009* (Cth).

**'PPS Law'** means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the PPS Regulations (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

**'PPS Regulations'** means the *Personal Property Securities Regulations 2010* (Cth).

**'Proportionate Liability Act'** means the *Civil Liability Act 2002* (NSW);

**'Council'** means Cumberland Council.

**'Security Interest'** means any 'security interest' as defined in the PPS Law.

**'Supplier'** means the party supplying the Goods, and specified in the Purchase Order.

**'Vehicle Laws'** means all applicable laws and standards relating directly or indirectly to the licensing and operation of heavy vehicles, mass, dimension and load restraint limits and requirements for heavy vehicles and driving rules (including laws and rules relating to fatigue management, driving under the influence of drugs or alcohol and speeding) for heavy vehicles, including but not limited to the Heavy Vehicle National Law Act 2012 (Qld), Heavy Vehicle National Law Application Act 2013 (Vic), Heavy Vehicle National Law (NSW) (2013 No 42), Heavy Vehicle National Law (ACT) Act 2013, Heavy Vehicle National Law (SA) Act 2013, Road Traffic (Administration Act 2008 (WA), Road Traffic (Vehicles) Act 2012 (WA) in force as at the date of this Purchase Order and as amended from time to time.

## 2. Supplier's Obligations

The Supplier must:

- (a) deliver the Goods in accordance with the requirements of this Purchase Order;
- (b) not interfere with, delay or damage the work of the Council (if any), or any other contractors working at the Delivery Address; and
- (c) comply with any directions given by the Council (including in respect of safety).

## 3. Council's Obligations

The Council must pay to the Supplier the Fee in accordance with this Purchase Order.

## 4. Conformity of Goods

- 4.1 The Supplier must deliver Goods that are of the quantity, quality and description detailed in this Purchase Order.
- 4.2 The Supplier warrants that:
  - (a) the Goods are fit for the purposes for which the Goods are intended to be used by the Council;
  - (b) the Goods comply with any samples, specifications, drawings or other descriptions provided to the Council;
  - (c) the Goods are of good quality, free from all defects (including defects in design, material and workmanship) and are new; and
  - (d) the Council will receive good and clear title to the Goods.
- 4.3 The Supplier shall provide, and shall procure from its manufacturers and subcontractors (at its cost), warranties and guarantees in respect of the Goods on terms reasonably required by the Council for the benefit of the Council or any other person nominated in writing by the Council.
- 4.4 All Goods provided by the Supplier must comply with the provisions of all applicable workplace health and safety legislation and any other applicable Legislative Requirements that may apply to the Goods.

4.5 Without limiting clause 4.4, the Supplier must ensure that hazardous Goods have prominent and suitable warnings on all containers, packages and documents containing the Goods, and these warnings must comply with all Legislative Requirements and as otherwise reasonably required by the Council.

4.6 In respect of any Goods supplied under this Purchase Order which are not in accordance with the requirements of this Purchase Order, and are defective in any way or are damaged due to the Supplier's failure to properly package the Goods or the Supplier's mishandling of the Goods (as determined by the Council), the Council may (at its sole discretion):

- (a) require the Supplier to make good that damage or rectify the defect within a timeframe specified by the Council. If the Supplier fails to do so within the specified timeframe, the Council may itself, or by engaging a third party, make good or rectify and recover its costs from the Supplier;
- (b) reject all or part of the Goods in which case the risk in the rejected Goods will remain with the Supplier and the Council will not be liable to pay for the rejected Goods for so long as they are rejected; or
- (c) accept the Goods, and the Fee shall be reduced by a reasonable amount to take account of the non-compliance, defect or damage, as determined by the Council.

4.7 The Council shall be entitled in such circumstances to recover from the Supplier any financial loss incurred by the Council either directly or indirectly arising from such occurrence.

4.8 Any warranties included in this Purchase Order will commence on the day of delivery or acceptance of the goods, whichever occurs last. The warranty shall be valid for a period of 90 days, or the length of the Supplier's, or the manufacturer's, standard warranty period, whichever is longer.

## 5. Delivery

5.1 The Supplier must deliver the Goods to the Delivery Address as directed by the Council from time to time.

5.2 The Supplier must deliver the Goods on the Delivery Date. Time is of the essence.

5.3 The Council may alter the Delivery Date at any time before the Delivery Date (but not to a date earlier than the Delivery Date) by way of written notice to the Supplier.

5.4 The Supplier must provide to the Council, on the Delivery Date, all drawings, operating and maintenance manuals and technical data associated with the Goods.

5.5 The Supplier must ensure that the Goods are contained and packaged safely and securely and protected against damage to ensure their safety during transport, storage and delivery.

## 6. Compliance with Vehicle Laws

6.1 The Supplier must comply (and ensure that its employees, servants, agents and subcontractors comply) with all Vehicle Laws applicable to the supply of the Goods.

6.2 The Supplier must ensure, so far as is reasonably practicable, the safety of the Supplier's transport activities and eliminate public risks associated.

6.3 If the Supplier is not able to perform an obligation under this Agreement without a breach of a Vehicle Law occurring, the Supplier must notify the Council immediately and must not breach, or permit a breach of, the Vehicle Law.

6.4 The Supplier must have an effective fatigue management and compliance program which complies with, and ensures ongoing compliance with, all the Vehicle Laws by the Supplier (and its employees, servants, agents and subcontractors and vehicles) (**Compliance Program**).

6.5 The Supplier must, within seven days of a written request to do so, provide the Council with a copy of or access to its Compliance Program and demonstrate compliance with the Compliance Program and all Vehicle Laws, including providing reasonable evidence of measures taken to achieve such compliance.

## 7. Title

7.1 Title to the Goods passes to the Council on the earlier of the date and time of:

- (a) payment for those Goods; and
- (b) subject to clause 4.6, delivery of those Goods to the Council.

7.2 The Supplier warrants that the Goods are free from all charges, liens and encumbrances.

## 8. Payment

8.1 Subject to clause 8.4 and the Supplier's compliance with this Purchase Order (including delivery of the Goods on the Delivery Date), the Council will pay the Fee within 14 days from acceptance of the Goods and Services and receipt of correctly rendered and dated invoice.

8.2 The Supplier is not entitled to interest on unpaid monies, or for any other costs associated with recovery from the Council for unpaid monies.

8.3 The Council may deduct from moneys due, or to become due, to the Supplier, any amount necessary to satisfy any debt due or any other claim the Council may have against the Supplier, whether under this Purchase Order or otherwise.

8.4 The Council has no liability for payment of the Fee if the Supplier cannot produce to the Council a delivery receipt, signed by an authorised representative of the Council. Notwithstanding any other details, terms or conditions on the delivery docket, acceptance of the Goods or any signature or endorsement on the delivery docket by the Council, or anyone else on behalf of the Council, has no legal or contractual effect.

8.5 The Fee is fixed, subject to any other special conditions as may be notified to the Supplier by the Council. The Fee shall include customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery, insurance and GST where the Supplier is registered for GST, and any other applicable costs and charges.

8.6 Invoices are to be sent to [accountspayable@cumberland.nsw.gov.au](mailto:accountspayable@cumberland.nsw.gov.au) or faxed to (02) 9643 1120. Invoices sent to the Council must have an official Cumberland Council purchase order number quoted to ensure payment.

## 9. Intellectual Property

- 9.1 The Supplier warrants that the Goods do not infringe or contribute to any infringement of any patent, registered design, copyright or moral right.
- 9.2 The intellectual property in all materials provided by the Council to the Supplier including, but not limited to, drawings, specifications, designs, manuals and/or tenders remains with the Council, and the Supplier must promptly return all such material to the Council, if requested by the Council.
- 9.3 The Supplier grants to the Council a royalty-free, irrevocable, worldwide, perpetual and transferable licence, which may be sublicensed by the Council in its sole discretion, to use any reports, designs, drawings, calculations, models, disks, tapes, other electronic data, written information and other documents created in respect of the Goods.
- 9.4 The Supplier indemnifies the Council against any and all liability, loss, damages and expenses arising out of any claim in respect of infringement or alleged infringement, of any patent, trade mark or design, copyright or any other form of intellectual or industrial property whether in Australia or overseas, relating to the Goods.

## 10. Indemnity

10.1 The Supplier indemnifies the Council, its officers, employees, agents and contractors (in this clause, referred to as 'those indemnified') against all cost, loss, expense or damage including legal costs and expenses on solicitor/own client basis, and liabilities incurred or suffered by those indemnified, caused directly or indirectly, or in connection with any:

- (a) breach of any warranty or representation given by the Supplier in relation to the Goods;
- (b) breach of any term of this Purchase Order;
- (c) in respect of damage to property of the Council or third parties or injury or death of third party in connection with this Purchase Order or the Goods;
- (d) liability under the *Competition and Consumer Act 2010* (Cth), the *Sale of Goods Act 1993* (NSW) and *Fair Trading Act 1987* (NSW) in force in New South Wales in connection with this Purchase Order or the Goods;
- (e) defect or fault or alleged defect or fault in the Goods; and
- (f) act or omission of the Supplier, its officers, employees, agents, or subcontractors,

which arises from any claim, suit, demand, action, or proceeding by any person. The Supplier's indemnity to the Council under this clause shall be reduced proportionately to the extent that any willful, unlawful, or negligent act or omission of the Council, its officers, employees, agents or contractors contributed to the loss or liability.

10.2 Without limiting clause 10.1, the Supplier is liable for any direct, indirect or consequential losses or expenses suffered by the Council or any third party arising out of or in connection with this Purchase Order or the use of the Goods, howsoever caused, including, but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

## 11. Insurance

11.1 Before commencing performance of this Purchase Order and for the duration of this Purchase Order, the Supplier shall effect and maintain the following insurances:

- (a) insurance cover for the Goods for their full replacement value against loss or damage, including loss or damage in transit to the Site and unloading at the Site;
- (b) workers compensation insurance, in accordance with the requirements of, and for an amount of not less than the maximum amount specified in, the relevant statutory regime in New South Wales; and
- (c) public and product liability insurance for the amount of \$20,000,000 covering:
  - (i) the respective rights and interests, and liabilities to third parties, of the parties from time to time, whenever performing obligations under the Purchase Order;
  - (ii) the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 11.1(a)) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy).

11.2 Whenever requested by the Council, the Supplier shall provide satisfactory evidence that all insurances required to be effected by the Supplier under this Purchase Order have been effected and maintained. If, after being requested by the Council, the Supplier fails to produce evidence of insurance as required by this clause, the Council may effect and maintain the insurance and pay the premiums, in which case the amount paid shall be a debt due from the Supplier to the Council.

## 12. Termination

12.1 Without prejudice to any right the Council may have to indemnity or damages, or to rescission, for breach of this Purchase Order, the Council may terminate this Purchase Order by written notice to the Supplier, at any time, at its absolute discretion, by giving the Supplier notice in writing, including termination for the Supplier's breach of this Purchase Order.

12.2 If this Purchase Order is terminated under this clause, the Council will be liable only for payment for Goods delivered in accordance with this Purchase Order before termination, and shall not be liable for any other cost, loss, damage or expenses to the Supplier arising out of the termination of this Purchase Order.

12.3 If for any reason the Supplier validly terminates this Purchase Order as a result of the breach or repudiation of this Purchase Order by the Council, this Purchase Order will be deemed to have been terminated by the Council under this clause.

## 13. PPSA

The Supplier agrees that the terms of this Purchase Order may constitute one or more Security Interests for the purpose of the PPSA and that:

- (a) to perfect any such Security Interest the Council may register a financing statement(s) on the Personal Property Securities Register;

- (b) the Supplier shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135 142 and 143 of the PPSA;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA;
- (d) the Supplier waives its right to receive notice of a verification statement under section 157 of the PPSA; and
- (e) the Supplier must, promptly on request by the Council, provide any such information and execute and deliver any such documents as the Council may reasonably require to protect the Security Interests granted to the Council by the Supplier under or in relation to this Purchase Order.

#### 14. Civil Liability Act

14.1 To the maximum extent permitted by law:

- (a) the parties agree that the Proportionate Liability Act will not have any application to this Purchase Order, or any of the obligations of the Supplier under this Purchase Order or at law;
- (b) the Supplier's agreement of sole responsibility and the indemnities contained in this Purchase Order shall apply despite the provisions of the Proportionate Liability Act; and
- (c) the parties agree that their rights, obligations and liabilities will be those which would exist if the Proportionate Liability Act did not apply.

14.2 If, despite the previous clause, the Proportionate Liability Act does apply, then:

- (a) the Supplier acknowledges and agrees that, for the purposes of the Proportionate Liability Act, the Supplier is entirely and solely responsible for any failure to take reasonable care on the part of any of its subcontractors, employees or agents; and
- (b) the Supplier undertakes to the Council, as a separate and independent absolute obligation not subject to any duty to take reasonable skill and care:
  - (i) which is defective or incomplete or which is not in conformance with the requirements of this Purchase Order; and
  - (ii) which would otherwise be a breach of the Supplier's obligations under this Purchase Order; or
  - (iii) to compensate the Council for any cost, loss or expense incurred by the Council as a result of having such work rectified or completed.

#### 15. General

- 15.1 The Supplier must not sub-contract or assign this Purchase Order to any other party without consent in writing from the Council.
- 15.2 The Supplier is liable for the acts, defaults and omissions of all of its employees, agents or subcontractors as if they were done by the Supplier.

15.3 Waiver by the Council of any specific default or defaults by the Supplier will not constitute a waiver by the Council of its rights arising out of any further default by the Supplier.

15.4 If any term or condition is unenforceable it shall be read down so as to be enforceable, or, if it cannot be read down, the term or condition shall be severed from this Purchase Order without affecting the enforceability of the remaining terms and conditions of this Purchase Order.

15.5 This Purchase Order constitutes the entire understanding between the Council and the Supplier in relation to the subject matter of this Purchase Order and supersedes any other agreement or arrangement between the parties in respect of the supply.

15.6 A notice (and other documents) shall be deemed to have been given if addressed or delivered by hand, email, mail or facsimile to the relevant address in the Details or last communicated in writing to the person giving the notice. A notice (and other documents) shall be deemed to have been received:

- (a) in the case of hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;
- (b) in the case of emailing, once sent unless the sender receives notice that the email has not been delivered;
- (c) in the case of posting, 3 business days after dispatch; or
- (d) in the case of facsimile, when the machine on which the notice is sent reports in writing that the notice has been transmitted satisfactorily.

15.7 This Purchase Order is to be governed by and construed in accordance with the law of New South Wales.

15.8 The parties submit to the jurisdiction of the courts of New South Wales and the courts of appeal from them.

15.9 This Purchase Order may be executed in counterparts. All executed counterparts constitute one document.

15.10 Where relevant, the Supplier be required to effect, and show effect of, adequate controls in accordance with statutory requirements to ensure protection of the environment.

#### 16. GST

16.1 Words or expressions used in this clause 15 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause

16.2 Any consideration payable or to be provided for a supply made under or in connection with this Purchase Order, unless specifically described in this Purchase Order as 'GST inclusive', does not include any amount on account of GST. If GST is payable on any supply made under or in connection with this Purchase Order (not being a supply the consideration for which is specifically described in this Purchase Order as 'GST inclusive'), the recipient of the supply must pay to the Supplier, an additional amount equal to the GST payable on the supply (GST Amount). The GST Amount is payable at the same time as the GST exclusive

consideration is paid or provided, subject to the Supplier issuing the recipient with a tax invoice for the supply to which the payment relates.

16.3 If the Supplier does not provide a tax invoice for a taxable supply either at the time that the supply is made or before the Council makes payment for the supply, the Council is deemed, at the time the supply is made, to have requested the Supplier to provide a tax invoice to the Council in respect of that taxable supply and the Supplier must promptly (and in any event within 3 business days after the taxable supply has been made) provide the Council with a tax invoice in relation to that supply.

16.4 If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

16.5 If a payment to a party under this Purchase Order is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

## 17. Contractors Registration and Approval

17.1 The Supplier agrees and acknowledges that:

- (a) Council uses BNG Contractor Services to maintain a listing of all suppliers and contractors engaged;
- (b) Council may require the Supplier to be registered and approved with BNG Contractor Services prior to works commencing for Council; and
- (c) any cost for complying with this clause 16.1 will be at the Supplier's expense.

17.2 To register with BNG Contractor Services the Supplier can:

- (i) log onto [www.bngconserve.com.au](http://www.bngconserve.com.au) or
- (ii) contact BNG's Client Services :
  - (A) Tel: (02) 88831518
  - (B) Fax: (02) 88831502
  - (C) Email: [conserve@bngconsulting.com.au](mailto:conserve@bngconsulting.com.au)

## 18. Inspection and Source Quality Assurance

18.1 The Supplier agrees and acknowledges that:

- (a) a representative of the Council, may do any of the following to verify compliance by the Supplier:
  - (i) quality audits and quality surveillance as defined in ANZ/ISO 8402 of the quality system and/or production processes; or
  - (ii) product inspections as defined in Australian Standard 1199 of the Goods delivered before acceptance.
- (b) it will provide the Council's representative with full and free access to its premises and work areas, and all relevant documentation to the Council for the purposes of verifying compliance with this Purchase Order.

## 19. Modern Slavery Compliance Requirements:

19.1 The Supplier agrees and acknowledges that:

- (a) The Supplier must comply with the Modern Slavery Act 2018 (NSW) and take reasonable measures to identify, assess, and mitigate Modern Slavery risks present in their operations and supply chains. These measures encompass the following:
  - (i) Developing an understanding of Modern Slavery and their obligations under the modern Slavery Act 2018 (NSW).
  - (ii) Actively engaging in efforts to identify and address Modern Slavery risks within the Supplier's operations and supply chain. These efforts must include compliance with Australian labour laws, conducting a Modern Slavery risk assessment, and having an applicable policy or equivalent measures in place.
- (b) The Supplier must promptly inform the Council in writing upon detecting any instances of Modern Slavery or human rights violations within their operations or supply chain. They must also outline the corrective actions taken, including measures to minimise the risk of future incidents. Failure to report and rectify such situations may lead to the termination of the Contract.

## 20. Public Interest Disclosure Requirements:

20.1 Public Interest Disclosures Act 2022 applies to a contract or subcontract (an agency service contract) under which a person or body is engaged to provide services on behalf of Council (the contracting agency), including an engagement to exercise a function for Council.

20.2 The Supplier engaging in exercising a function for Council, agrees and acknowledges that:

- (a) The Supplier must comply with the Public Interest Disclosures Act 2022. The supplier must notify Cumberland City Council of a voluntary public interest disclosure of which the Supplier becomes aware where either:
- (b) The disclosure relates to Cumberland City Council; or
- (c) The maker of the disclosure is known to be a public official associated with the Cumberland City Council.

20.3 The Supplier must notify the Council of serious wrongdoing committed, or alleged to be committed, by an individual providing services under this Agreement.

20.4 The Supplier must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of Cumberland City Council or any other agency (as defined in the PID Act).

20.5 The Supplier must ensure that all individuals involved in providing services(s) under this Agreement acknowledge that:

- (a) Cumberland Council has an obligation to take corrective action under s. 66 of the PID Act; and

- (b) Council has a right to terminate the Agreement in response to a finding of serious wrongdoing or other misconduct involving the Supplier or an individual providing services under this Agreement.

20.6 If the Supplier subcontracts the Agreement in whole or in part, the Supplier must ensure that the subcontract contains terms binding the person or body engaged under the subcontract that are equivalent to the terms binding in this clause.

## 21. Disability Inclusion Action Plan:

21.1 The Supplier agrees and acknowledges to comply with Disability Inclusion Act 2014 No 41.

21.2 The Supplier will take reasonable measures:

- (i) To acknowledge that people with disability have the same human rights as other members of the community and that the State and the community have a responsibility to facilitate the exercise of those rights,
- (ii) To promote the independence and social and economic inclusion of people with disability,
- (iii) To enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services,
- (iv) To provide safeguards in relation to the delivery of supports and services for people with disability,
- (v) To support, to the extent reasonably practicable, the purposes and principles of the United Nations Convention on the Rights of Persons with Disabilities,
- (vi) To provide for responsibilities of the State during and following the transition to the National Disability Insurance Scheme.

21.3 The Supplier has read and acknowledges Cumberland Disability Inclusion Action Plan 2022-2026.



CUMBERLAND  
CITY COUNCIL

16 Memorial Avenue, PO Box 42, Merrylands NSW 2160

T 8757 9000 F 9840 9734 W [cumberland.nsw.gov.au](http://cumberland.nsw.gov.au) E [council@cumberland.nsw.gov.au](mailto:council@cumberland.nsw.gov.au)

 CUMBERLANDSYD |  CUMBERLANDCOUNCILSYDNEY