



## standard terms and conditions

These terms and conditions are to be read together with the applicable Hawkesbury City Council (Council) purchase order, policy guidelines and/or requirements specification incorporated by reference or as published on council's website from time to time [www.hawkesbury.nsw.gov.au](http://www.hawkesbury.nsw.gov.au).

These terms and conditions govern the purchase of goods and/or services by Council from the person or entity named (Supplier) on the applicable purchase order. By accepting to supply the items described in a Council purchase order, Suppliers agree to be bound by and accept these terms and conditions.

- 1. Other Documents.** These terms and conditions may not be altered, supplemented, or amended by the use of a Supplier invoice or other Supplier document unless agreed in writing by the Council. Council may change these terms and conditions as they relate to future purchases at any time without prior notice. Where the purchase order is for the supply of goods and/or services in relation to a specific signed contract between the Council and Supplier, and where these terms and conditions conflict with that contract, the terms and conditions of that contract shall have precedent and prevail over these terms and conditions.
- 2. Governing Law, Place of Sale and Taxes.** These terms and conditions and all related transactions will be governed by and construed in accordance with the laws of New South Wales and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the State. The place of sale for all Services supplied under these terms and conditions is Australia. The Supplier is to show Goods and Services Tax (GST) as may be payable clearly on the invoice.
- 3. Payment Terms.** Unless otherwise approved in writing by Council, payment shall be made in Australian dollars, by either cheque or Electronic Funds Transfer (EFT) into the Supplier nominated bank account within thirty (30) days from the end of the month of the date in which a correctly rendered invoice is issued by Supplier, provided that all goods and services so described have been received and/or completed to the satisfaction of Council. Supplier may not invoice for part delivery of an order.
- 4. Freight.** All goods will be delivered free unless otherwise agreed by Council.
- 5. Title.** Unless otherwise agreed, title to the goods as specified in the order will pass to Council upon delivery of those goods to Council.
- 6. Cancellation of Order.** Council may cancel an order or part thereof, in its absolute discretion, if the goods and/or services to be provided by the Supplier are either; not provided and/or not completed by the date specified in the order, or; the goods and/or service does not comply with the description, specifications and/or drawings attributed to the order.
- 7. Warranties.** Supplier warrant that; (A) All data and information provided in connection with the goods will be true and accurate and that the goods will be of sound merchantable quality and fit for the purpose so stated; (B) Council will obtain full, unencumbered title to the goods; (C) All goods will conform to insurance requirements as applicable, Government Health & Safety regulations and Australian Standards, including those administered by WorkCover NSW & the Environmental Protection Authority; (D) All services will be provided in a competent manner; (E) They will comply with and ensure that its employees, sub-contractors and agents comply with any Acts, regulations, local laws and by-laws, Codes of Practice, Australian Standards and Occupational Health and Safety standards and procedures of Council as may be in effect from time to time and which are in any way applicable to an order or the performance of services under a purchase order; and, (F) The sale or use of all goods does not infringe upon any patent, registered design, trade mark or copyright or other intellectual property and the Supplier and its agents holds Council and its agents harmless against any infringement of an intellectual property, and agrees to indemnify Council against all costs and damages incurred in any action arising from such infringement.
- 8. Entire Agreement.** The Supplier agrees that these terms and conditions and any document incorporated by reference or referred to herein constitute the entire agreement between the Supplier and Council pertaining to the subject matter of these terms and conditions, and supersedes, terminates and otherwise renders null and void any and all prior agreements, understandings, negotiations, contracts, proposals or requests for proposals, whether written or oral, between Supplier and Council except as stated in Clause 1.



9. **Severability.** If the whole or any part of these terms and conditions is void, unenforceable or unlawful, that part is severed and the remainder of these terms and conditions has full force and effect.
10. **Headings.** The headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference shall be derived there from.
11. **Force Majeure.** Council shall not be liable for any delay or failure in performance caused by circumstances beyond its direct control.
12. **Confidentiality.** The Supplier must not at any time, including at any time after completion of this contract, disclose to any person, firm or corporation, details of this contract, order, transaction, or any other information arising from this order without the written permission of Council except in the circumstance covered in Clause 13.
13. **The Government Information (Public Access) Act 2009 (GIPA)** provides obligations on private sector bodies entering into a contract with the Council to provide an immediate right of access to information. The following subclauses give information on the relevant section of the GIPA that will affect this contract with the supplier.

## 13.1 GIPA Act, S. 54 - Consultation

13.1.1 The Council 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:

- (a) the information:
  - i. includes personal information about the Contractor or its employees;
  - ii. concerns the Contractor's business, commercial, professional or financial interests; or
  - iii. concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or
  - iv. concerns the affairs of a government of the Commonwealth or another State (and the Contractor is that government);
- (b) the Contractor may reasonably be expected to have concerns about the disclosure of the information; and
- (c) 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.

13.1.2 If, following consultation between the Council 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.

13.1.3 In determining whether there is an overriding public interest against disclosure of government information, the Council will take into account any objection received by the Contractor.

13.1.4 If the Contractor objects to the disclosure of some or all of the information but the Council nonetheless decides to release the information, the Council must not provide access until it has given the Contractor notice of the Council's decision and notice of the Contractor's right to have that decision reviewed.

13.1.5 Where the Council has given notice to the Contractor in accordance with Clause 13.1.4, the Council must not provide access to the information:

- (a) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or



(b) where any review of the decision duly applied for is pending.

13.1.6 The reference in Clause 13.1.5 a 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.

## 13.2 GIPA Act, S. 121 - Access to Information

13.2.1 The Contractor must, within 7 days of receiving a written request by the Council, provide the Council with immediate access to the following information contained in records held by the Contractor:

- (a) information that relates directly to the performance of the services provided to the Council by the Contractor pursuant to the Contract;
- (b) 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
- (c) information received by the Contractor from the Council to enable it to provide the services pursuant to the Contract.

13.2.2 For the purposes of Clause 13.2.1, information does not include:

- (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
- (b) information that the Contractor is prohibited from disclosing to the Council by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
- (c) information that, if disclosed to the Council, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Council, whether at present or in the future.

13.2.3 The Contractor will provide copies of any of the information in Clause 13.2.1, as requested by the Council, at the Contractor's own expense.

13.2.4 Any failure by the Contractor to comply with any request pursuant to Clause 13.2.1 or 13.2.3 will be considered a breach of an essential term and will allow the Council 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 the Council, then the termination will take effect 7 days after receipt of the notice.