

Tamworth Regional Council Purchase Order – Standard Terms and Conditions

1. General

These conditions apply to any Purchase Order for goods and/or services ("Goods/Services") placed by Tamworth Regional Council and must be read in conjunction with and in addition to any contract specified in an individual Purchase Order. If there is any inconsistency between these conditions and those of the contract, the contract terms and conditions will prevail.

2. Quality and Delivery

The Supplier must, as specified in the Purchase Order:

- a) Provide Goods/Services safely and appropriately to protect it from damage; and
- b) deliver the Goods/Services:
 - i. by the date;
 - ii. to the place; and
 - iii. in the quantity required by Council and to its satisfaction.

No amendments to these Terms and Conditions will be binding on either party unless approved in writing by Council's authorised representative.

The Supplier is taken to have accepted a Purchase Order if it notifies Council that it accepts the Purchase Order or delivers the Goods and/or Services described in the Purchase Order.

If the Supplier is unable or unwilling to accept the Purchase Order, it must notify Council promptly. It may propose a variation to the Purchase Order, or offer other Goods and/or Services in substitution, but any such variation or substitution must be approved by Council in writing before delivery.

The Purchase Order once accepted, combined with these Terms and Conditions and any terms and conditions in the Purchase Order and/or any attachment expressly incorporated in writing, will form a binding agreement between the parties ("Agreement").

3. Ownership and Risk

- a) Title in the Goods/Services will pass to Tamworth Regional Council on acceptance of delivery.
- b) The Supplier assumes all risk in the Goods/Services until it is accepted by Tamworth Regional Council.

4. Warranties

- a) In addition to any warranties implied by law, the Supplier warrants that:
 - i. the Goods/Services are free from defects in material and workmanship and are of merchantable quantity;
 - ii. it has a right to provide the Goods/Services;
 - iii. the Goods/Services are free from any charge or encumbrance in favour of any third party not declared or known to Tamworth Regional Council before or at the time the Purchase Order is made;
 - iv. the Goods are of the description and quality specified in the Purchase Order;
 - v. the Goods are fit for purpose;
 - vi. the Goods/Services comply with all applicable Australian standards and legislation; and
 - vii. the Goods do not infringe any patent, registered design, trademark or name, copyright or any other protected right
- b) The Supplier will ensure that any warranty offered by a manufacturer of the Goods/Services is enforceable by Tamworth Regional Council.
- c) For the avoidance of doubt Tamworth Regional Council may treat any breach of the warranties in this clause 4 by Supplier as a repudiation of the Purchase Order giving rise to the remedies specified in Clause 5.
- d) By agreeing to provide goods and/or services in accordance with this Purchase Order the Supplier warrants that it complies with the *Fair-Trading Act 1987*

(NSW) and the *Competition and Consumer Act 2010 (Cth)*.

5. Acceptance and Rejection

- a) Tamworth Regional Council may, at any time before acceptance, reject the Goods/Services if Tamworth Regional Council believes the Goods/Services are defective, do not comply with the warranties specified in clause 4 above or do not meet the requirements of the Purchase Order. Tamworth Regional Council prior to rejection may unpack, inspect and test the Goods/Services for this purpose
- b) Tamworth Regional Council may, at any time after acceptance, reject the Goods/Services if Tamworth Regional Council believes the Goods/Services are defective, do not comply with the warranties specified in clause 4 above or does not meet the Purchase Order, provided that the defect could not have been discovered prior to acceptance.
- c) If Tamworth Regional Council rejects the Goods/Services (or any part of the Goods/Services) the Supplier must comply with a requirement of Tamworth Regional Council to:
 - i. collect the defective Goods/Services and replace them at the Supplier's expense; or
 - ii. refund Tamworth Regional Council any amount paid for the defective Goods/Services.
 - iii. The Supplier must mitigate any costs or expenses incurred in this instance.
- d) The parties expressly agree that the rights of Tamworth Regional Council pursuant to paragraph (c) above apply notwithstanding that the matters in clause 4 are described as warranties.

6. Time of the Essence

Unless otherwise specified as such in the Purchase Order, time will be of the essence with respect to the Supplier's delivery obligations under this Agreement. The Supplier must deliver the Goods and Services as set out in the Purchase Order in accordance with the time periods for delivery specified in the Purchase Order.

Payment of any invoice by Council will not be deemed acceptance of any Goods and/or Services, but rather such Goods and/or Services will be subject to a 4-month period of inspection, testing, acceptance or rejection by Council. If Council rejects any Goods and/or Services within such 4-month period, an equitable adjustment must be made to the Fees to reflect non-delivery (the Supplier must refund Council accordingly).

7. Sub-contracting

Except as expressly provided in the Purchase Order, the Supplier may not sub-contract any obligations under this Agreement without the prior written consent of the Council.

Where the Supplier sub-contracts any of its obligations under this Agreement, the Supplier remains liable for the carrying out and completion of those obligations.

8. Cancellation

- a) If the Supplier is unable to supply the Goods/Services as specified, it must promptly notify Tamworth Regional Council, and if the Goods/Services are completely unavailable, the Supplier may offer another Good/Service as a substitution. Tamworth Regional Council may accept or reject the substitute Goods/Services in its absolute discretion.
- b) The substitution of the Goods/Services must be approved by both parties in writing
- c) Tamworth Regional Council may (at any time before delivery), cancel or change the Purchase Order. If this occurs, and:
 - i. the change causes an increase or decrease in the cost of the Goods/Services, or time required to deliver the Goods/Services, an equitable adjustment will be made appropriate to the circumstances; and/or
 - ii. The Supplier has already incurred any reasonable expense in satisfying the Purchase Order, Tamworth Regional Council will pay those expenses.

9. Price, Payment Terms, GST

- a) The Supplier must have an Australian Business Number (ABN). Tamworth Regional Council requests the Supplier to issue a tax invoice for the Goods/Services within twenty-eight days from the date of the Purchase Order. The Supplier's tax invoice(s) are to show all the details required by A New Tax System (Goods and Services Tax) Act 1999
- b) If the Supplier is not registered for GST and is not required to be registered for GST, Tamworth Regional Council requests the Supplier to issue an invoice for the Goods/Services within twenty-eight days from the date of this order.
- c) A (tax) invoice must identify the Purchase Order Number. Each (tax) invoice must also include ABN and the name of the Supplier that is recorded in the Australian Business Register for that ABN. Otherwise, PAYG Withholding (No ABN) legislation requires Tamworth Regional Council to withhold an amount from the payment and send it to the Australian Taxation Office.
- d) Tamworth Regional Council will pay the Supplier within the agreed terms of payment with the Supplier.

In consideration for the provision of Goods and/or Services under this Agreement, Council agrees to pay to the Supplier the fees specified in the Purchase Order ("Fees").

Unless otherwise specified in the Purchase Order, Council agrees to pay the Supplier the Fees within 30 days of receipt and acceptance of an invoice by Council (such invoice to be accompanied by such reasonable information as Council may require). Council may withhold any disputed portion of the fees until the dispute is resolved.

If GST is payable in connection with the Goods and/or Services to be supplied under this Agreement, then the Supplier irrevocably warrants and agrees that the Fees payable to it under this agreement and specified in the Purchase Order is the GST inclusive price of those Goods and / or

Services unless otherwise agreed in the Purchase Order.

10. Indemnity

The Supplier indemnifies Council against all losses it directly or indirectly sustains or incurs as a result of:

- a) Any negligent, unlawful or wilful act or omission of the Supplier, Supplier personnel or Supplier subcontractors;
- b) Any infringement or claimed infringement of the Intellectual Property Rights (IPRs) or moral rights of a third party arising out of its receipt or use of the Goods and / or Services;
- c) Death or personal injury of any person to the extent caused by the Supplier;
- d) Property damage to the extent caused by the Supplier;
- e) Any breach by the Supplier of clause 11 (IPR and Confidential Information).

The liability of a party for breach of this Agreement, or in tort, or for any other common law or statutory cause of action arising out of the operation of this Agreement, will be determined under the relevant law in Australia that is recognised, and would be applied, by the High Court of Australia.

Losses means actions, claims, liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) and consequential and indirect losses and damages including those arising out of any third-party claim.

11. IPR and Confidential Information

Subject to clause 11.1 below (the following clause), all rights, title and interest in any IPRs created in providing the Goods and/or Services ("Project IPRs") will be owned by Council, and to the extent needed, the Supplier hereby assigns all rights, title and interest it may have now or in the future in those Project IPRs to Council.

11.1 The IPRs owned by a party prior to the date of this Agreement

("Background IPRs") remain with the contributing party.

11.2 The Supplier grants to Council a perpetual, irrevocable, royalty- free worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, publish, adapt, or communicate to the public and exploit the Supplier's Background IPRs in conjunction with the Goods and/or Services, and the Project IPRs. The Supplier must provide Council will all necessary documentation and materials to take advantage of this licence.

11.3. Each party ('recipient') must keep any Confidential Information disclosed to it confidential and must not deal with it in any way that might prejudice its confidentiality. These obligations continue indefinitely beyond the end of this Agreement, but do not extend to disclosures:

- a) required by law (including under the Government information (Public Access) Act 2009); and
- b) to a recipient's officers or employees:
- c) who have a need to know for the purposes of this agreement (but only to the extent that each has a need to know); and
- d) before disclosure, have been directed by the recipient to keep that Confidential Information confidential

11.4 The Supplier must comply with, carry out and discharge the obligations contained in the information privacy principles set out in sections 8 to 19 of the Privacy and Personal Information Act 1998 (NSW) as if it were Council carrying out and discharging those obligations.

The Supplier must notify Council as soon as possible upon it becoming aware of a breach of these obligations.

IPRs means all registered and unregistered rights in relation to the present and future copyright, trademarks, designs, know-how, patents, confidential information and other intellectual property as defined in article 2 of the Convention

establishing the World Intellectual Property Organisation 1967.

Confidential Information means all data and/or information exchanged between the parties for the purposes of this Agreement before, on or after the date of this Agreement (including the terms of this Agreement) relating to the operations, business, research and technology of the disclosing party, but not including any information which:

- a) is publicly available at the date of this Agreement;
- b) becomes publicly available subsequent to the date of this Agreement without breach of this Agreement;
- c) a party obtained from a third party without breach by that third party of any obligation of confidence concerning that Confidential Information; or
- d) was already in the party's possession (as evidenced by written records) when provided by or on behalf of the other party

12. General

- a) The Supplier must not assign the benefit of the Purchase Order without Tamworth Regional Council prior written approval.
- b) No variation of the Purchase Order will be binding on Tamworth Regional Council unless in writing and signed by a duly authorised representative of Tamworth Regional Council.
- c) Tamworth Regional Council's failure or delay to enforce a condition, or to exercise a right or remedy for breach, is not a waiver of any other breach.
- d) These conditions will be governed by the law of New South Wales and the parties submit to the jurisdiction in that State.

13. Insurance

The Supplier must maintain the following policies of insurances (and provide copies on request):

- a) Public Liability: Amount per occurrence shall not be less \$20,000,000 (AUD);

- b) Product Liability (where applicable): Amount per occurrence shall not be less \$20,000,000 (AUD);
- c) Professional Indemnity (where applicable): Amount per occurrence shall not be less than \$5,000,000 (AUD). The policy must include the provision for one automatic reinstatement of the sum insured;
- d) Motor vehicle insurance for any vehicles used to provide the goods/services; and
- e) Workers Compensation.

14. WH&S and Work Cover regulations

All suppliers and contractors must comply with current WHS legislation including where applicable, any Chain of Responsibility legislation.

15. Termination

Council may terminate this Agreement by written notice to the Supplier:

- a) If the Supplier breaches a term of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring to do so (or the Supplier breaches a term of this Agreement which is not capable of remedy); or
- b) If the Supplier is or becomes subject to proceedings which may result in the Supplier becoming bankrupted, wound up, under voluntary administration or subject to the control of a receiver or receiver and manager.

Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this Agreement.

The Supplier agrees to cooperate and work with third party suppliers of Council to the extent necessary to give effect to this Agreement. Council reserves the right to retain other persons or entities to supply the Goods and/or Services, including but not limited to any part of the Goods and/or Services.

16. Compliance with Council Policies

The Supplier agrees and warrants they will comply with all relevant Council policies in regard to the Goods and/or Services the subject of the Purchase Order. It is the responsibility of the Supplier to ensure they are aware of any relevant policies. Council's policies are available at [Policies | Tamworth Regional Council \(nsw.gov.au\)](https://www.nsw.gov.au/policies-tamworth-regional-council). Should further clarification be required, the Supplier should contact their Council contact person.