

# Works Purchase Order

**PARTICULARS**

Item		
1.	<b>Council</b>	Knox City Council ABN 24 477 480 661
2.	<b>Council's address and contact details</b>	Address: 511 Burwood Highway, Wantirna South VIC 3152 Email <a href="mailto:strategic.procurement@knox.vic.gov.au">strategic.procurement@knox.vic.gov.au</a>
3.	<b>Contractor</b>	<b>### insert name and ACN]</b>
4.	<b>Contractor's address and contact details</b>	Address: <b>### insert]</b> Email: <b>### insert]</b>
5.	<b>Works</b>	<b>###Insert Description of Works]</b> as more specifically set out in the Purchase Order Documents
6.	<b>Completion Date</b>	<b>###Insert Date]</b>
7.	<b>Insurances</b>	<p><b>Contract Works Insurance covering:</b></p> <ol style="list-style-type: none"> <li>The Works and all materials and things brought on site for the purpose of The Works and</li> <li>Third Party Liability (Public Liability) \$20,000,000 minimum.</li> </ol> <ul style="list-style-type: none"> <li>Motor Vehicle Third Party Property Damage insurance for not less than \$10,000,000 per occurrence in respect of any vehicles used in connection with the 'Works'.</li> <li>Workers' Compensation for VIC.</li> <li>Excesses/ Deductibles or self-insured retentions must be noted on Contract Works, Public Liability and Professional Indemnity certificates.</li> <li>All insurance must be underwritten by an insurer authorised by APRA and with a security rating of BBB+ or greater by Standard and Poors or the equivalent rating by another reputable rating agency.</li> </ul>
8.	<b>Purchase Order Documents</b>	<p>The following documents comprise the Purchase Order between the parties:</p> <ol style="list-style-type: none"> <li>the Formal Instrument of Agreement</li> <li>General Conditions</li> <li>Particulars</li> <li><b>###Insert reference to the document which describes the works be carried out and attach that document]</b>, a copy of which is attached.</li> </ol>
9.	<b>Purchase Price</b>	<p><b>\$###Insert amount]</b> (GST exclusive)  <b>\$###Insert amount]</b> (GST inclusive)</p>
10.	<b>Authorised Nominating Authority</b>	<ul style="list-style-type: none"> <li>The Resolution Institute (Victorian Chapter);</li> <li>Rialto Adjudications Pty Ltd;</li> <li>RICS Dispute Resolution Service.</li> </ul>

## GENERAL CONDITIONS

### 1. Definitions

In this Purchaser Order:

“**Authorised Nominating Authority**” means those authorities listed in Item 10;

“**Completion**” has the meaning given in clause 2;

“**Completion Date**” means the date listed in Item 6;

“**Formal Instrument of Agreement**” means the formal instrument of agreement to which these General Conditions are attached;

“**General Conditions**” means these conditions annexed to the Particulars;

“**Item**” means an item in the Particulars;

“**Loss**” includes any cost, loss, liability, damage or expense, howsoever arising;

“**Particulars**” means the particulars on the front page before the General Conditions;

“**Privacy Laws**” means any law which relates to the privacy of information with which the Contractor must comply, including the *Privacy Act 1988* (Cth) (and the Australian Privacy Principles under that Act), the *Privacy and Data Protection Act 2014* (Vic) (and the Information Privacy Principles under that Act) and any applicable code of practice;

“**Purchase Order**” means the agreement between the parties constituted by the Purchase Order Documents;

“**Purchase Order Documents**” means the documents in Item 8; “**Purchase Price**” means the amount to be paid by Council to the Contractor as specified in Item 9;

“**SOP Act**” means the *Building and Construction Industry Security of Payment Act 2002* (Vic); and

“**Works**” means the works described in Item 5.

### 2. Completion

The Contractor must complete the Works on or before the Completion Date to the satisfaction of Council and in accordance with this Purchase Order. The Works are only considered complete when Council provides written notice to the Contractor that it is satisfied that the Works have been completed in accordance with this Purchase Order (**Completion**).

### 3. Contractor's Primary Obligation

The Contractor must carry out and complete its obligations under this Purchase Order:

- 3.1 in a proper and workmanlike manner;
- 3.2 with the professional skill, care and diligence that would be expected of a competent and experienced contractor;
- 3.3 so as to achieve Completion on or before the Completion Date;
- 3.4 using suitably qualified personnel;
- 3.5 in accordance with all directions given by Council;
- 3.6 having ensured that the Contractor has undertaken a risk assessment of any safety risks and implemented appropriate control measures;
- 3.7 by, when requested, providing to Council for sighting any documents relating to compliance with occupational

health and safety law with the understanding that Council might arrange for a review by a third party, might review them internally or may do neither of those things; and

- 3.8 in accordance with any Acts, regulations and Council's policies and procedures in any way applicable to the performance of this Purchase Order, including, without limitation, any occupational health and safety legislation.

### 4. Variation

Council may, at any time, give written notice to the Contractor proposing a variation to the Works. The Contractor must, as soon as possible, or in any event within 7 days, provide a written proposal for any variation to the Purchase Price that will apply to the varied Works. Council may (but is not obliged to) accept the varied Purchase Price proposal within 7 days of receipt by giving a written acceptance to the Contractor.

### 5. Confidentiality

The Contractor will not disclose, and will ensure that its employees, agents and contractors do not disclose, any confidential information relating to Council or its affairs which may come to its or their knowledge during the term of this Purchase Order.

### 6. Privacy

The Contractor must:

- 6.1 comply, and procure that its subcontractors comply with, the Privacy Laws; and
- 6.2 must not, and must procure its subcontractors do not, cause Council to breach of its obligations under the Privacy Laws.

### 7. Council's Primary Obligation

If the Contractor complies with its obligations under this Purchase Order, Council must pay the Purchase Price to the Contractor upon Completion of the Works.

### 8. Insurances

The Contractor will effect the insurance policy or policies stated in Item 7 with an insurer and on terms approved by Council.

### 9. Goods and Services Tax (GST)

The Purchase Price is exclusive of GST. Where Council is required to pay the Contractor any amount under this Purchase Order on account of GST, the amount representing GST will only be payable by Council to the Contractor where the Contractor supplies to Council a tax invoice for GST purposes, in a form approved by Council.

### 10. Default by Contractor

- 10.1 If the Contractor defaults in the performance of any obligation under this Purchase Order, Council may give written notice to the Contractor specifying the failure and requiring it to be remedied within 7 days.
- 10.2 If, within 7 days after receipt of the notice, the Contractor fails to remedy the default to the satisfaction of Council, Council (without prejudice to any other rights that it may have under this Purchase Order or at common law against the Contractor) may:
  - 10.2.1 suspend payment under this Purchase Order; or
  - 10.2.2 terminate this Purchase Order by giving written notice.

### 11. Insolvency of Contractor

If the Contractor is insolvent, has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed to it, enters into a scheme of arrangement with its creditors, is wound or is bankrupt, Council may terminate this Purchase Order by giving written notice to the Contractor.

## 12. Subcontracting and Assignment

- 12.1 The Contractor must not, except with the written consent of Council, subcontract or assign the whole or any portion of its rights or obligations under this Purchase Order.
- 12.2 Where Council gives consent to the Contractor in accordance with this subclause, the Contractor remains fully responsible for performance under this Purchase Order and will be liable to Council for the acts or omission of any subcontractor as if those acts or omissions were those of the Contractor.

## 13. Security of Payment

- 13.1 If the Contractor is entitled to make an adjudication application under the SOP Act, the Contractor must make such adjudication application to one of the Authorised Nominating Authorities specified in the Particulars.
- 13.2 The Contractor must indemnify and keep indemnified Council on demand from and against all Loss suffered or incurred by Council arising out of or in connection with a suspension by a subcontractor under the SOP Act for works which form part of the Works.

## 14. Indemnity and Advance Release

The Contractor indemnifies and holds harmless Council from and against all actions, claims, losses, damages, penalties or demands arising out of or in connection with the performance or purported performance of its obligations under this Purchase Order. This indemnity survives termination or expiration and Completion of this Purchase Order.

## 15. Termination

- 15.1 Council may, at any time, terminate this Purchase Order by giving written notice to the Contractor. The Contractor must, on receipt of such notice, immediately cease all work in connection with the performance of the Works and take all appropriate action to mitigate any loss or prevent further costs being incurred.
- 15.2 In the event of termination pursuant to this clause 15, Council will pay to the Contractor any part of the Purchase Price owing for those parts of the Works carried out prior to the date of terminating. The Contractor releases Council from any further claim arising out of or in connection with the termination.

## 16. Amendment

This Purchase Order may only be varied or replaced by a document duly executed by the parties.

## 17. Time of the Essence

Time is of the essence under this Purchase Order.

## 18. No Relationship

Nothing in this Purchase Order will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Purchase Order will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

## 19. Whole Understanding

This Purchase Order constitutes the whole understanding between the parties and embodies all terms on which the Works are to be performed by the Contractor. If the Contractor's acceptance or supply of this Purchase Order contains any terms in conflict with this Purchase Order, the Purchase Order will have precedence.

## 20. Governing Law

The law of the State of Victoria governs this Purchase Order and any legal proceedings under this Purchase Order.

## 21. Joint and Several Obligations

If the Contractor consists of two or more parties, this Purchase Order binds each of them severally and jointly.

## 22. Method of Giving Notices

A notice required or permitted to be given by one party to another under this purchase Order must be in writing, addressed to the other party and delivered by post, email address specified in Item 2 and Item 4

## 23. Receipt of Notices

A notice given to a party in accordance with clause 22 must be treated as having been duly given and received:

- 23.1 If delivered to a party's address or left at the party's address, on the day of delivery;
- 23.2 If posted within Australia to an Australian address, 6 business days and in any other case; 10 business days after posting;
- 23.3 Subject to clause 23.4, if served by email, on the day of transmission unless the sender receives notification that the email containing the notice was not received; and
- 23.4 If received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business.