Whangarei District Council

Purchase Order Terms and Conditions

October 2026

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These terms & conditions apply to all Purchase Orders issued by Whangarei District Council (Council) until further notice.

1. *Formation of the Contract*

1.1 Subject to clause 1.2, this contract for the sale and purchase of Goods and/or Services (**Contract**) will arise on the Supplier's acceptance of an Order (whether by written acknowledgement or by Delivery) and will embody the terms of the relevant Order and the following terms and conditions. In the event of any inconsistency between the terms of the relevant Order and these terms and conditions, the terms of the relevant Order will prevail.

1.2 In the event that the parties have signed a written agreement for the provision of the Goods and/or Services, the terms and conditions of that agreement will apply and not these terms and conditions.

1.3 Subject to clause 1.2, the terms of the relevant Order together with these terms and conditions comprise the entire agreement of the parties in relation to the supply of Goods and/or Services and supersede any previous discussions, arrangements and representations. Without limiting the foregoing, any terms and conditions asserted or provided by the Supplier in connection with the supply of the Goods and/or Services (for example, the Supplier's purchase terms and conditions) will not apply.

1.4 Orders may be placed by any department of Council. In all such cases, Council is the principal contracting party and is solely responsible for the obligations arising under the Contract.

1.5 If the Order is not accepted by the Supplier's written acknowledgement or Delivery within 10 Days of the date of the Order, Council may cancel an Order by written notice to the Supplier.

1.6 Any estimates given by Council may be inaccurate and the Supplier will not rely on them in any circumstances.

2. *Terms of Payment*

2.1 The Supplier must on Delivery of the Goods, send detailed advice notes (packing slips) with the Goods to each delivery point ensuring that the Purchase Order number is on such notes.

2.2 The Supplier must submit a valid and proper tax invoice for payment for the Goods and/or Services following their Delivery.

2.3 The Supplier's invoice must:

a) be typewritten (either computer generated or typed) in a PDF format, and must not be handwritten;

b) be sent by email to **financehelpdesk@wdc.govt.nz** and if requested, CC'd to the Council representative responsible for the order with the Supplier;

c) include the Supplier's GST number and any other information for a valid GST invoice (if applicable);

d) include the relevant Purchase Order Number; Invoices which do not show a valid Purchase order number will not be paid.

e) include a description of the Goods and Services supplied and any relevant dates of supply; and

f) show the total payable by Council, with details of how this amount has been derived.

2.4 The Supplier acknowledges that payment may end up being delayed if Councils invoicing and payment process requirements are not followed by the Supplier.

2.5 Subject to compliance with these terms and conditions and there not being manifest errors or discrepancies, the Supplier's invoice for the Goods and/or Services will be paid by Council on the 20th day of the month following the date of the invoice, provided the invoice has been received by Council no later than the 5th working day of the month.

*Example: For monthly Services provided in **January** with an invoice dated:*
- *31st January and delivered by 5th February will be paid on 20th February.*
- *31st January and delivered after 5th February will be paid on 20th March.*
- *1st February and delivered by 5th February will be paid on 20th March.*

2.6 If any part of an invoice or the Delivery of the Goods and/or Services is disputed by Council, Council may withhold payment of the relevant invoice or part thereof until such time as the dispute is resolved.

2.7 In making payment for the Goods and/or Services, Council may withhold, deduct or set off any amount that was previously overpaid or any amount recoverable by Council from the Supplier under the Contract or otherwise.

3. *Packing and Delivery*

3.1 The Supplier must have a valid Purchase Order Number before supplying Goods and/or or Services.

3.2 Goods supplied against an invalid Purchase Order Number (or without packing slips marked with the valid Purchase Order Number) may be returned at the Supplier's expense including the cost of packing, transporting, insuring and handling of the rejected Goods.

3.3 The Supplier will adequately pack and protect the Goods against damage and deterioration, at the Supplier's expense.

3.4 The Supplier must deliver the Goods and/or Services not later than the time/s specified in the Order or, if no time is specified in the Order, within a reasonable time of the date of the Order. Time will be of the essence.

3.5 Council accepts no responsibility for the Delivery of the Goods and/or Services (unless otherwise agreed) or for packing materials or cases.

3.6 If an emergency or disaster occurs, the Supplier will use its best endeavors to provide or delay Delivery as requested by Council.

4. *Passing of Title and Risk*

4.1 Subject to Councils rights under clause 3, risk and title to the Goods will pass to Council on Delivery. The Supplier will not register a security interest in the Goods under this Contract or the terms and conditions of any other agreement between the parties (unless expressly agreed in writing).

5. *Warranties*

5.1 In addition to all other warranties, conditions or other terms expressed or implied by law or otherwise, the Supplier warrants to Council and to any subsequent purchaser of the Goods and/or Services that:

a) at the time of Delivery, the Goods will be new and unused, capable of carrying out the required function in an efficient, accurate and timely manner to the capacity required for the Councils operations, free of defects, adverse performance impediments and viruses;

b) the Goods and/or Services will comply with any specifications supplied by Council or agreed between the parties, will be fit for any purpose that Council makes known to the Supplier and will comply with all applicable legislation,

regulations and codes of practice;

c) at the time of Delivery, the Goods will be free of any security interest, lien or other encumbrance;

d) the Supplier has all Intellectual Property rights relating to the Goods and/or Services required for the Goods and/or Services to be provided to Council and neither the Goods and/or Services, nor the provision or use of the Goods and/or Services by Council will breach any Intellectual Property rights of any third party;

e) the Goods and/or Services will be Delivered at the time specified on the Order or, if not specified, within a reasonable time of placing the Order;

f) the Services will be carried out with reasonable care, diligence and skill and performed by persons with the requisite skill and experience; and

g) the Supplier will comply with all applicable legislation, regulation and industry codes of practice.

6. *Default and Cancellation*

6.1 If the Supplier breaches any term of the Contract then, at the sole option of Council, and without prejudice to any other remedy or right, Council may:

a) If the term relates to Goods, reject the Goods in whole or in part and return the Goods to the Supplier at the Supplier's risk and expense including the cost of packing, transporting, insuring and handling the rejected Goods and the Supplier must immediately reimburse the Council for any monies paid in respect of the returned Goods;

b) If the term relates to Goods, require the Supplier to replace, repair, reinstate or re-supply the Goods at the Supplier's expense so that they conform to the Contract or may have the Goods replaced, repaired or re-supplied by another person and recover the cost of doing so from the Supplier;

c) If the term relates to Services, require the Supplier to perform the Services again to the required standard at the Supplier's expense or may have the Services re-supplied by another person and recover the cost of doing so from the Supplier; and/or

d) suspend payment for the Goods and/or Services until the breach has been remedied to the Councils reasonable satisfaction.

6.2 Council may terminate the Contract or cancel any Order effective immediately if the Supplier breaches any provision of the Contract and fails to remedy the breach within 10 Days of giving written notice to the Supplier specifying the breach and requiring it to be remedied. Breach of clause 5 and/or 12 by the Supplier may be deemed as breach of the Contract whether or not Council elects to accept the Goods and/or Services in question.

6.3 Council may, by written notice to the Supplier, terminate the Contract or cancel any Order immediately if the Supplier becomes bankrupt, ceases to carry on business, goes into liquidation, becomes insolvent, appoints a receiver or enters into a formal proposal for a compromise with its creditors under the Companies Act 1993.

6.4 Council may terminate this Contract by giving the Supplier 10 Days written notice. In the event that Council does so, this Contract will terminate and any outstanding Orders at the end of the period of notice will be deemed cancelled.

6.5 Subject to Council's rights of deduction or set-off, Council will pay the Supplier for any Goods and/or Services validly provided up to the date of termination.

6.6 No failure or delay on the part of Council to exercise any of its rights in respect of any default by the Supplier will prejudice Council's rights in connection with that default or any subsequent default.

6.7 Termination of the Contract and/or cancellation of an Order does not affect any

responsibilities which are intended to continue or come into effect after the Contract terminates.

7. *Indemnity*

The Supplier will fully protect, indemnify and hold harmless Council, its officers, employees and agents from and against any liability, losses, damages, actions, proceedings, claims, demands, costs and expenses including solicitor and own client costs, incurred in connection with any breach by the Supplier of any term of the Contract or the negligent or wrongful act or default of the Supplier or any of its employees, subcontractors or agents. This obligation continues after the termination or expiry of the Contract.

8. *Relationship Between Parties*

8.1 Nothing in the Contract should be interpreted as constituting either Council or the Supplier, an agent, partner or employee of the other and neither party will have the authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in the Contract.

8.2 The Supplier acknowledges that where Council acquires Goods or Services as a consumer (as that term is defined in the Consumer Guarantees Act 1993), then that act applies to the acquisition of the Goods or Services.

8.3 Council's relationship with the Supplier is not exclusive.

8.4 Council may carry out a review of the Supplier's performance under this Contract at any time and the Supplier agrees to co-operate fully with Council, including by attending all relevant meetings and providing all requested records and information.

9. *Confidentiality*

9.1 All Confidential Information will be and will remain the property of Council, and the Supplier must:

a) keep all Confidential Information confidential and use the Confidential Information only for the purpose of the Contract;

b) not disclose any Confidential Information to any person without the prior written consent of Council (unless the disclosure is required under law); and

c) destroy or return the Confidential Information to Council upon the Council's request at any time, provided that the Supplier may disclose Confidential Information to its employees, subcontractors and advisers to the extent necessary for the purposes of the Contract. The Supplier will ensure that its employees, subcontractors and advisers will comply with these obligations of confidentiality.

9.2 The Supplier will not use Council's name in advertising its business or activities without the prior written consent of Council and will comply with all reasonable terms and conditions upon which such permission may be given.

9.3 Upon request, the Supplier will provide to Council a copy of any record on the Supplier's file or within the possession or control of the Supplier, where receipt of such record may be reasonably required by Council.

9.4 This clause 9 survives termination and expiry of the Contract.

10. *Health and Safety Council Protocols*

10.1 The Supplier warrants that it and any of its employees, agents and subcontractors have and will comply with:

a) approved codes of practice under the Health and Safety at Work Act 2015, any further or subsequent legislation, and all other regulatory provisions connected with the Goods and/or the Services; and

b) all Council protocols and rules and all industry standards connected with the supply of Goods and/or Services.

11. *Intellectual Property*

11.1 All Intellectual Property owned by either party and existing prior to the commencement of the supply of Goods and /or Services will remain the exclusive property of that party.

11.2 The Supplier agrees that all new Intellectual Property that arises or is created by the Supplier or any of the Supplier's employees, subcontractors or agents in the course of supplying the Goods and/or Services will be Council 's exclusive property.

11.3 The Supplier grants to Council a perpetual, royalty free, non-exclusive license to use all Intellectual Property owned by the Supplier under clause 11.1.

12. *Assignment and Subcontracting*

12.1 The Supplier may not assign, subcontract or otherwise transfer any of its rights, benefits or obligations under the Contract without the prior written consent of Council. A change in the management or control of the Supplier or the sale of a major part of the Supplier's business or assets will be deemed to be an assignment for the purposes of this clause.

12.2 Where Council consents to the Supplier assigning, subcontracting or transferring any of its obligations under, or aspect of, this Contract to a third party, the Supplier will remain fully responsible for all obligations to Council under the Contract.

13. *Notices*

13.1 Any notice to be given under the Contract must be in writing and must be delivered or sent by post, fax or e-mail, if to:

a) Council, to the address on the Order; or

b) the Supplier, to its registered office, or if the Supplier has no registered office, its usual address.

13.2 A notice will be deemed to have received:

a) if delivered, when it is left at the relevant address;

b) if sent by post, 2 days after it has been posted;

c) if sent by fax or email, the time set out on the relevant confirmation report evidencing an error-free transmission to the correct fax number or email address (as applicable).

14. *Force Majeure*

14.1 Neither party will be liable for any non-performance of its obligations due primarily to a Force Majeure Event.

15. *Regulatory Capacity*

15.1 To the extent that Council has regulatory authority or powers (**Regulatory Capacity**), this Contract does not bind or fetter Council in its Regulatory Capacity.

15.2 The Supplier will not be entitled to any damages or other payment should Council acting in its Regulatory Capacity, either decline any consent or permission, issue any consent or permission on terms that are unsatisfactory to any party or for any act or omission by Council in its Regulatory Capacity.

16. *Interpretation*

16.1 In this Contract:

Council means the Whangarei District Council.

Confidential Information includes the terms of the Contract(including the details of any Order), information highlighted by Council to the Supplier as being confidential and information that would reasonably be considered to be confidential, except information that is public knowledge.

Day means a day on which registered banks are open for business in Whangarei, excluding Saturdays and Sundays.

Delivery means the delivery of the Goods to and/or the provision of the Services at a location nominated by Council.

Deliver has a corresponding meaning.

Force Majeure Event means an event or circumstance which is beyond a party or parties' reasonable control and not reasonably foreseeable when entering into this Agreement, including (without limitation): any act of God, fire, flood, earthquake, pandemic, military action, state or government act or direction, change in any law or regulation, war, riot or act of terrorism, natural disaster, industrial or national labour strikes or other labour disputes (other than labour disputes directly affecting one of the parties), or any other cause beyond the affected party's reasonable control.

Goods means the goods, materials or substances specified in the Order and all parts or components of the same.

GST means goods and services tax prescribed by the provisions of the Goods and Services Tax Act 1985, at the rate prevailing from time to time.

Intellectual Property means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and, without limitation, includes inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright) throughout the world in all literary works, artistic works, computer software, and any other works or subject matter in which copyright may subsist now or in the future; confidential information, trade secrets and trade marks, including service marks and trading names (whether registered or unregistered).

Order means an official Council purchase order which maybe placed with the Supplier from time to time containing a reference to these terms and conditions.

Purchase Order Number means the number set out on the Order as relating to that particular purchase.

Services means the services specified in the Order to be provided or performed by the Supplier.

Supplier means the person, firm, company or corporate entity to whom Council issues an Order and/or with whom Council enters into the Contract.

16.2 The word "including" and similar words do not imply any limitation.

16.3 This Agreement is governed by New Zealand law and both parties agree to submit to the exclusive jurisdiction of the Courts of New Zealand.