

General

1.1. By accepting this purchase order, the supplier agrees to be bound by these Purchase Order General Conditions, unless different terms and conditions have been agreed by Central Darling Shire Council in writing and a reference to the relevant contract number of those terms and conditions is noted on the front page of this purchase order.

1.2. Subject to the terms of the purchase order and any special conditions, if the purchase order is issued under the terms of an existing contract, the terms of the existing contract shall be read in conjunction with these Purchase Order General Terms and Conditions.

1.3. If the supplier is unable to comply with this purchase order, the supplier must:

- a) Immediately contact Central Darling Shire Council; and
- b) Not take any step in fulfilment of this purchase order until the supplier receives further written instructions from Central Darling Shire Council.
 - i. If this purchase order is for the supply of goods, clauses 2 and 5 to 16 apply.
 - ii. If this purchase order is for the provision of services, clauses 3 and 5 to 16 apply.
 - iii. If this purchase order is for small works, clauses 4 to 16 apply
 - iv. If a purchase order is for a combination of any of the supply of goods, services and small works, then the relevant clauses for each category of supply nominated in this clause apply.

2. Purchase order for goods

2.1 Supply of the Goods

2.1.1. If this purchase order is for the supply of goods, the supplier must supply the goods to Central Darling Shire Council in accordance with this purchase order.

2.1.2. If this purchase order specifies that the supplier is responsible and liable for the delivery of the goods to Central Darling Shire Council, the supplier must:

- A. Deliver the goods to the delivery address by the delivery date and time as specified in the purchase order; and
- B. Bear all costs associated with the delivery of the goods to Central Darling Shire Council including (without limitation) the cost of insuring the goods for transport and delivery.

2.1.3. Subject to clause 2.1.4, if the purchase order specifies a freight carrier in the 'Freight' field, Central Darling Shire Council agrees to pay directly for the freight charges in relation to goods and clause 2.1.2 will not apply.

2.1.4. Unless otherwise agreed in writing with Central Darling Shire Council, Central Darling Shire Council will not pay delivery or freight charges for partial delivery of the goods.

2.2. General Obligations of the Supplier – Supply of goods

2.2.1. The supplier must:

- a) ensure that the goods are suitably labelled, packed and prepared for delivery.
- b) not charge Central Darling Shire Council for any wrapping, packing, cartons or crating unless first agreed in writing by Central Darling Shire Council.
- c) ensure, and represents and warrants to Central Darling Shire Council, that the goods:
 - i. comply with all applicable laws and with any specifications or requirements as advised by Central Darling Shire Council.
 - ii. are new, fit for the purpose for which goods of the same kind are commonly supplied and fit for any other purpose made known to the supplier by Central Darling Shire Council.
 - iii. are of merchantable quality and free from defects in material and workmanship; and
 - iv. include any applicable manufacturer's warranty; and
- d) ensure that all tax invoices, delivery dockets and correspondence clearly show the relevant purchase order number.

2.2.2. The supplier represents and warrants that the sale or use of the goods does not infringe upon any patent, trademark, copyright or other Intellectual Property of any third party.

2.3. Inspection, testing and acceptance of the goods

2.3.1. Central Darling Shire Council must inspect and test the goods within 21 calendar days of the delivery to or collection of the goods by Central Darling Shire Council.

2.3.2. If, because of inspecting the goods under clause 2.3.1, Central Darling Shire Council reasonably determines that some or all of the goods do not meet the requirements of this purchase order ("Defective goods"), then Central Darling Shire Council will promptly notify the supplier in writing of the Defective goods and hold the Defective goods for the supplier's instructions and at the supplier's risk for a period not exceeding 21 calendar days.

2.3.3. If the supplier's instructions are not received within 21 calendar days, Central Darling Shire Council may return the Defective goods to the supplier's premises at the supplier's expense.

2.3.4. Central Darling Shire Council will not be liable to the supplier for the payment for any Defective goods.

2.3.5. If Central Darling Shire Council does not notify the supplier of any defects in the goods in accordance with clause 2.3.2 within 28 calendar days of the delivery to or collection of the goods by Central Darling Shire Council, Central Darling Council is deemed to have accepted the goods.

2.3.6. Signed delivery dockets do not constitute acceptance of the goods by Central Darling Shire Council. Signed delivery dockets only constitute acknowledgement of the number of packages or cartons delivered to, or received by, Central Darling Shire Council.

3. Purchase Order for Services

3.1. Supply of Services

3.1.1. If this purchase order is for the supply of services, the supplier must supply the services to Central Darling Shire Council in accordance with this purchase order.

3.1.2. If supplying the services requires the supplier to attend a Central Darling Shire Council site, the supplier must comply with all Central Darling Shire Council's policies, procedures and directions while on site.

3.2. General obligations of the supplier – provision of Services

3.2.1. The supplier must provide the services:

- a) In compliance with all applicable laws and in a proper and professional manner in accordance with generally accepted industry standards, practices and codes of conduct; and
- b) without doing anything that may directly or indirectly impair (or be likely to impair) the good name and reputation of Central Darling Shire Council or its business.

3.2.2. In providing the services, the supplier represents and warrants to Central Darling Shire Council that:

- a) the provision of the services does not infringe upon any intellectual property of any third party.
- b) in entering and performing its obligations under this purchase order it has not, and will not, be in breach of any law or any obligation owed to a third party.
- c) the supplier and all its employees and subcontractors hold all such licences, permits, registrations and certifications as required by law; and
- d) it has the necessary skills, experience, qualifications, resources, technology and know-how to provide the Services.

3.3. Defective Services

3.3.1. If Central Darling Shire Council reasonably forms the view that the services do not comply with the requirements in this purchase order, whether in whole or in part ("Defective Services"), Central Darling Shire Council may within 21 calendar days of receipt of the relevant defective services issue a notice to the supplier in writing.

3.3.2. If Central Darling Shire Council issues a notice under clause 3.3.1, the supplier must at its own cost comply with the requirements of that notice.

3.3.3. Central Darling Shire Council will not be liable to the supplier for the payment for any defective services until they have been rectified in accordance with clause 3.3.2.

4. Purchase order for Small Works

"Small works" means physical works with a total cost of less than \$150,000 GST Inc.

4.1. Undertaking Small Works

4.1.1. If this purchase order is for the undertaking of small works, the supplier:

- a) Must undertake the small works in accordance with this purchase order; and
- b) Ensure the small works are completed by any date for completion nominated in this purchase order.

4.1.2. If the works described in this purchase order do not meet the definition of Small Works, the supplier must not undertake the works and must notify Central Darling Shire Council immediately.

4.2. General obligations of the supplier – Small Works

4.2.1. The supplier must ensure, and represents and warrants to Central Darling Shire Council, that:

- a) The small works will be undertaken in a manner that complies with all applicable laws and with any specifications or requirements as advised by Central Darling Shire Council.
- b) In entering into and performing its obligations under this purchase order it has not, and will not, be in breach of any law or any obligation owed to a third party;
- c) The supplier and all of its employees and subcontractors hold all such licences, permits, registrations and certifications as required by law to undertake the small works;
- d) It has the necessary skills, experience, qualifications, resources, technology and know-how to undertake the small works.
- e) Use suitable new materials;
- f) Undertake the small works with proper and tradesman like workmanship and manage the quality of the small works in accordance with recognised Australian industry standards.
- g) Use reasonable endeavours to prevent unauthorised access to, and implement adequate protective measures at, the specified site, including but not limited to temporary fencing, signage and lighting;
- h) Do all that is reasonably necessary to protect the small works, protect the property of Central Darling Shire Council and others and ensure the safety and convenience of Central Darling Shire Council personnel and the public on or near to the specified site; and
- i) Maintain a clean and tidy work site, progressively remove any waste and leave the site in a good state of repair.
- j) They will, where applicable, comply with the *Building and Construction Industry Security of Payment Act 1999 (NSW)*.
 - a. The supplier further warrants that if the supplier engages the services of any independent contractors or sub-contractors during the completions of any small works, that the parties engaged will, where applicable, comply with the *Building and Construction Industry Security of Payment Act 1999 (NSW)*.

4.2.2. The supplier must promptly notify Central Darling Shire Council on becoming aware of:

- a) any damage to material or property, environmental damage, or any injury or death that occurs in connection with the small works; and
- b) anything that may affect or delay the performance of the small works, including unanticipated site, weather or access conditions or Central Darling Shire Council customer engagement requirements or concerns.

4.2.3. Central Darling Shire Council may, at any time, direct the supplier to stop undertaking the small works if deemed necessary or prudent to comply with any safety, operational, environmental requirement or otherwise required by law. On receipt of a direction, the supplier must immediately stop undertaking the small works and comply with any reasonable and lawful further directions from Central Darling Shire Council.

4.3. Defective Works

4.3.1. If Central Darling Shire Council reasonably forms the view that the small works do not comply with the requirements in this purchase order, whether in whole or in part ("Defective Works"), Central Darling Shire Council may within 6 months of completion of the small works issue a notice to the supplier in writing:

- a) identifying the aspect of the Small Works that do not comply.
- b) directing the supplier to rectify the Defective Works; and
- c) specifying a time and date by which the supplier must rectify the defective Works.

4.3.2. If Central Darling Shire Council issues a notice under clause 4.3.1, the supplier must at its own cost comply with the requirements of that notice.

4.3.3. If the supplier fails to comply with a notice issued under clause 4.3.1, Central Darling Shire Council may have the relevant works completed by a third party and recover the cost of doing so from the supplier as a debt due and payable.

4.4. Access to the Site

4.4.1. Central Darling Shire Council must give the supplier access to sufficient parts of any Central Darling Shire Council site to allow the supplier to undertake the small works.

4.4.2. The supplier must comply with all directions of Central Darling Shire Council in relation to any small works on a Central Darling Shire Council site, including directions in relation to safety or the protection of the environment.

4.4.3. While on a Central Darling Shire Council site, the supplier must comply with Central Darling Shire Council's policies and procedures, as directed by Central Darling Shire Council.

4.4.4. Central Darling Shire Council may, in its sole and absolute discretion, have the supplier or an employee, representative or subcontractor of the supplier removed from a Central Darling Shire Council site if Central Darling Shire Council forms the view that the person is incompetent, negligent or guilty of misconduct, including

for a failure to follow any applicable policy, procedure or direction issued by Central Darling Shire Council.

5. Insurance

5.1. The supplier must have and maintain:

5.1.1. all insurances required by any law; and

5.1.2. Insurance cover sufficient to cover any loss or costs that may be incurred and for which the supplier is liable in connection with the supply of the supplies,

- a) Product Liability Insurance at an appropriate sum for the relevant purchase order;
- b) Public liability insurance;
 - a. For Purchase Orders that meet the definition of "High Risk Construction Work" in the Work, Health and Safety Regulation 2011 (NSW) the amount per occurrence shall not be less than \$20,000,000;
 - b. In all other instances the amount per occurrence shall not be less than \$10,000,000;
- c) Professional Indemnity Insurance;
 - a. In purchase orders involving providing professional advice or design works insurance coverage shall not be less than \$5,000,000; or
 - b. In all other instances, an appropriate sum for the relevant purchase order;
- d) Works Insurance.
- e) Workers Compensation; and
- f) Cyber security (where applicable).

The supplier must provide evidence of such insurance at the request of Central Darling Shire Council

6. Quality and Delivery

6.1. The supplier must, as specified in the scope of work or request for quotation or purchase order:

- a) provide goods/services safely and appropriately to protect the goods/services from damage or degradation; and
- b) deliver the goods/services:
- c) by the date and/ or time specified;
- d) to the place specified; and
- e) in the quantity specified.

7. Warranties

7.1. In addition to any other warranties implied by law, the supplier warrants that:

- a) the goods/services are free from defects in material and workmanship and are of merchantable quality, including being acceptable in appearance and finish, free from defects, safe and durable;
- b) it has a right to provide the goods/services, and in the case of a sale the supplier has a right to sell the goods, and in the case of an agreement to sell, the supplier will have a right to sell the goods at the time when the property is to pass to "Central Darling Shire Council";

- c) "Central Darling Shire Council" shall have and enjoy the right to quiet possession of the goods;
- d) the goods/services are free from any charge or encumbrance in favour of any third party not declared or known to "Central Darling Shire Council" before or at the time the purchase order is made;
- e) the goods are of the description and quality specified in the purchase order;
- f) in the case of a purchase order for the sale of goods by sample, the bulk shall correspond with the sample in quality, state or condition, and "Central Darling Shire Council" shall have a reasonable opportunity of comparing the bulk with the sample, and the goods shall be free from any defect rendering them not merchantable which would not be apparent on reasonable examination of the sample;
- g) where there is a purchase order for the sale of goods by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description;
- h) the goods are fit for purpose, including all the purposes for which goods of that kind are commonly supplied and any other purpose made known explicitly or implicitly by "Central Darling Shire Council" to the supplier or a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made;
- i) the manufacturer of the goods will take reasonable action to ensure that facilities for the repair of the goods, and parts for the goods, are reasonably available for a reasonable period after the goods are supplied;
- j) the manufacturer of the goods will comply with any express warranty given or made by the manufacturer in relation to the goods;
- k) the supplier of the goods will comply with any express warranty given or made by the supplier in relation to the goods;
- l) the goods/services comply with all applicable Australian standards and legislation;
- m) the goods do not infringe any patent, registered design, trademark or name, copyright or any other protected right; and
- n) the supplier personnel will have all necessary experience, skill, knowledge and competence to perform the services, and the services will be rendered with due care and skill.

7.2. The supplier will ensure that any warranty offered by a manufacturer of the goods/services is enforceable by "Central Darling Shire Council".

7.3. For the avoidance of doubt "Central Darling Shire Council" may treat any breach of the warranties in this clause 4 by the supplier as a repudiation of the purchase order giving rise to the remedies specified in clause 5.

7.4. 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), the Sale of goods Act 1923 (NSW) and the Competition and Consumer Act 2010 (Cth).

8. Indemnity

8.1. The supplier indemnifies Central Darling Shire Council and all of its agents, representatives, officers or employees on demand against all losses, damages, liabilities, claims and expenses (including legal costs) incurred by Central Darling Shire Council arising directly or indirectly as a result of or in connection with:

- a) any death or injury to persons; or
- b) any loss or damage to Central Darling Shire Council's or a third party's real or personal property, caused by any negligent act or omission of the supplier.

9. Exclusion and/or Limitation of Liability

9.1. The supplier indemnifies "Central Darling Shire Council" or any of its agents, representatives, officers or employees against any and all liability resulting from:

- a) Any and all breaches by "Central Darling Shire Council" or any of its agents, representatives, officers or employees of any and all implied conditions and warranties to the extent permitted by law;
- b) Any and all negligence by "Central Darling Shire Council" or any of its agents, representatives, officers or employees and is satisfied that doing so will not remove the consideration flowing;
- c) Any and all special, indirect, consequential and pure economic loss arising out of or in connection with an act or omission of "Central Darling Shire Council" or any of its agents, representatives, officers or employees; and
- d) Any and all types of work, supplies, events, acts or omissions outside of the area(s) of expertise of "Central Darling Shire Council" or any of its agents, representatives, officers or employees;

9.2. The contra proferentum rule does not apply to these conditions or to any purchase order or contract between the supplier and "Central Darling Shire Council" or any of its agents, representatives, officers or employees.

9.3. Where liability cannot be excluded, it is limited to \$100 per breach in respect of any claim arising out of or in connection with these conditions or the relationship established by any purchase order or contract between the supplier and "Central Darling Shire Council" or any of its agents, representatives, officers or employees.

9.4. The indemnity in clause 8.1 is reduced proportionally to the extent that Central Darling Shire Council, its employees, or representatives has contributed to any of the loss suffered.

9.5. Neither party shall have any liability to the other for cost of capital, costs of financing, loss of business opportunities or goodwill, loss of use or production, loss of profit, business, contracts, revenues or anticipated savings, or loss of future contracts, or any financial or economic loss in each case whether direct or indirect whether or not foreseeable at the date upon which the parties entered into the Contract and whether such liability is based in contract, indemnity, warranty, tort (including negligence of any kind), strict liability or otherwise.

10. Termination or Amendment of a Purchase Order

10.1. A party ("Party A") may terminate a purchase order by written notice to the other party ("Party B") if Party B breaches the requirements of the purchase order and does not remedy that breach within seven (7) calendar days of being provided notice of the breach by Party A.

10.2. If a purchase order is terminated, the supplier must immediately cease the manufacture, packaging and/or delivery of all or part of any goods, cease the provision of any services and stop undertaking any small works.

10.3. If Central Darling Shire Council amends a purchase order ("purchase order Amendment") or a purchase order is terminated:

a) Central Darling Shire Council must reimburse the supplier for any reasonable costs incurred by the supplier in respect of the termination of the purchase order or the purchase order amendment, but only where and to the extent that the supplier provides written evidence of such costs to the satisfaction of Central Darling Shire Council; and

b) the supplier must refund or credit to Central Darling Shire Council any amount paid by Central Darling Shire Council to the supplier prior to the termination or the date of the purchase order amendment in respect of the goods and/or services and/or small works (as the case may be) to which the terminated purchase order or the purchase order amendment relates.

c) No variation of the purchase order will be binding on "Central Darling Shire Council" unless in writing and signed by a duly authorised representative of "Central Darling Shire Council".

11. Modern Slavery Act

11.1. In this clause:

- a) "Modern Slavery" has the meaning given to it in the Modern Slavery Act 2018 (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons; and
- b) "Modern Slavery Laws" means the Modern Slavery Act 2018 (Cth) and any other applicable legislation addressing similar subject matter.

11.2. The supplier warrants that it:

- a) complies with and will continue to comply with all applicable Modern Slavery Laws;
- b) has thoroughly investigated its labour practices, and those of its subcontractors in respect of any Modern Slavery used anywhere in its or its subcontractors' operations or supply chain (to the extent reasonably possible);
- c) has put in place all necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and
- d) has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.

11.3. If the supplier is a 'reporting entity' for the purposes of any state or federal Modern Slavery Laws, including the Modern Slavery Act 2018 (Cth), it must provide Central Darling Shire Council with a copy of any report it is required to prepare under that legislation at Central Darling Shire Council's request

12. Payment

12.1 For each supply of goods, services and/or small works accepted by Central Darling Shire Council, the supplier may submit a claim for payment to Central Darling Shire Council in the form of a tax invoice.

12.2 Each tax invoice submitted by the supplier to Central Darling Shire Council must show:

- a) the purchase order number that the invoice relates to;
- b) Central Darling Shire Council's ABN and address;
- c) the words "tax invoice" where GST is applicable to any of the goods and/or services and/or Small Works being supplied;
- d) the supplier's name and ABN;
- e) if goods were supplied: a breakdown of the type of goods supplied; the quantity of those goods; the price per good; and the total cost for the provision of all goods to which the tax invoice relates;
- f) if services were provided: a description of the services provided and the total cost of the services to which the tax invoice relates; and
- g) if small works were undertaken: a description of the small works undertaken and the total cost of the small works to which the tax invoice relates.

12.3 The tax invoice must be submitted to Accounts Payable, Central Darling Shire Council, PO Box 165, Wilcannia, NSW, 2836 or by email to accountspayable@centraldarling.nsw.gov.au

12.4 Central Darling Shire Council must pay the supplier within 30 calendar days of receipt of the tax invoice for each accepted supply of goods, services, and /or small works, unless Central Darling Shire Council has rejected the tax invoice in writing, with reasons.

12.5 Any payment made by Central Darling Shire Council is without prejudice to Central Darling Shire Council's rights, including (without limitation) Central Darling Shire Council's rights in relation to defective goods, defective services and/or defective works and the right to demand a refund of any amount paid in error.

13. Goods and Services Tax

13.1 Unless otherwise expressly stated, any amounts payable for a supply made under this purchase order are exclusive of GST.

13.2 Subject to the supplier providing a valid tax invoice, Central Darling Shire Council will pay any GST payable in respect of the supply, in addition to the amounts payable under this purchase order.

14. WH&S and Work Cover regulations

14.1 All suppliers, contractors and service providers must comply with current WHS legislation.

14.2 Where required, suppliers are required to comply with "Central Darling Shire Council's" WHS requirements.

15. Time of Supply

15.1 If the supplier supplies goods or Services to "Central Darling Shire Council" and the time within which the goods or Services are to be supplied is fixed by the contract for the supply of the goods or Services or is to be determined in a manner agreed to by "Central Darling Shire Council" and the supplier, then time is vital.

15.2 If the supplier supplies Services to "Central Darling Shire Council" and the time within which the Services are to be supplied is not fixed by the contract for the supply of the Services or is not to be determined in a manner agreed to by "Central Darling Shire Council" and the supplier, then the supplier warrants that the Services will be supplied within a reasonable time.

15.3 For the avoidance of doubt "Central Darling Shire Council" may treat any breach of the warranties contained within the purchase order – Terms and Conditions by the supplier as a repudiation of the purchase order giving rise to the remedies specified in clause 8.

16. Miscellaneous

16.1. If there is any inconsistency between these Purchase Order General Conditions, the purchase order and the supplier's tax invoice or other trading terms, whether past, present or future, the following order of precedence will apply to the extent of the inconsistency:

- a) Central Darling Shire Council purchase order General Conditions;
- b) Purchase order; then
- c) Any documents issued by the supplier.

16.2 The supplier must maintain and take all reasonable steps to maintain Central Darling Shire Council's confidential information in strictest confidence, use that confidential information solely for the purpose of supplying the goods and/or providing the services and/or conducting small works (as the case may be) to Central Darling Shire Council and if requested in writing by Central Darling Shire Council to do so, must securely return to Central Darling Shire Council all confidential information within 14 calendar days, as well as removing and/or destroying all confidential information retained by the supplier.

16.3 The supplier must not directly or indirectly make use of any intellectual property of Central Darling Shire Council, except with the prior written consent and for the benefit of Central Darling Shire Council.

16.4 The supplier must not, without the prior written approval of Central Darling Shire Council, subcontract all or any part of its obligations under the purchase order.

16.4.1 Where Central Darling Shire Council has granted approval for the supplier to subcontract all or any part of

its obligations under the purchase order, the supplier warrants that any sub-contractor will, where applicable, comply with the *Building and Construction Industry Security of Payment Act 1999 (NSW)*.

16.5 Nothing in these Purchase Order General Conditions is intended to create a partnership, joint venture or agency relationship between Central Darling Shire Council and the supplier. The supplier acknowledges that it has no authority to bind Central Darling Shire Council.

16.6 These Purchase Order General Conditions may only be varied by agreement between the parties in writing.

16.7 Neither party may assign the purchase order without the written approval of the other party, which must not be unreasonably withheld.

16.8 These Purchase Order General Conditions are subject to the laws in force in New South Wales.

16.9 The supplier must not, and must ensure that its representatives (including its employees, officers, agents, subcontractors and related corporate entities) do not make any public disclosures, announcements or statements in relation to the provision of services, supply of goods or performance of small works (as relevant), without Central Darling Shire Council's prior consent and if such disclosure, announcement or statement is required as a matter of law, such consent will not be unreasonably withheld.