



Muswellbrook Shire 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 *Muswellbrook Shire Council* and must be read in conjunction with any contract specified in an individual Purchase Order. If there is any inconsistency between these conditions and 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

3. Ownership and Risk

- (a) Title in the Goods/Services will pass to *Muswellbrook Shire Council* on delivery.
- (b) The Supplier assumes all risk in the Goods/Services until it is accepted by *Muswellbrook Shire 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 *Muswellbrook Shire 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 *Muswellbrook Shire Council*.
- (c) For the avoidance of doubt *Muswellbrook 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.
- (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) *Muswellbrook Shire Council* may, at any time before acceptance, reject the Goods/Services if *Muswellbrook Shire Council* believes the Goods/Services is defective, do not comply with the warranties specified in clause 4 above or do not meet the Purchase Order. *Muswellbrook Shire Council* prior to rejection may unpack, inspect and test the Goods/Services for this purpose.
- (b) *Muswellbrook Shire Council* may, at any time after acceptance, reject the Goods/Services if *Muswellbrook Shire Council* believes the Goods/Services is 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 *Muswellbrook Shire Council* rejects the Goods/Services (or any part of the Goods/Services) the Supplier must comply with a requirement of *Muswellbrook Shire Council* to:
 - (i) collect the defective Goods/Services and replace it at the Supplier's expense; or
 - (ii) refund *Muswellbrook Shire Council* any amount paid for the defective Goods/Services.
- (d) The parties expressly agree that the rights of *Muswellbrook Shire Council* pursuant to paragraph
- (e) above apply notwithstanding that the matters in clause 4 are described as warranties.

6. Cancellation

- (a) If the Supplier is unable to supply the Goods/Services as specified, it must promptly notify *Muswellbrook Shire Council* and if the Goods/Services are completely unavailable, the Supplier may offer another Good/Service as a substitution. *Muswellbrook Shire 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) *Muswellbrook Shire 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;
 - (ii) The Supplier has already incurred any reasonable expense in satisfying the Purchase Order, *Muswellbrook Shire Council* will pay those expenses.

7. Price, Payment Terms, GST

- (a) The Supplier must have an Australian Business Number (ABN). *Muswellbrook Shire 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 register for GST and is not required to be registered for GST, *Muswellbrook Shire 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) law requires *Muswellbrook Shire Council* to withhold an amount from the payment and send it to the Australian Taxation Office.
- (d) *Muswellbrook Shire Council* will pay the Supplier within the agreed terms of payment with the Supplier.

8. Indemnity

The Supplier indemnifies *Muswellbrook Shire Council* against any and all claims by a third party and any loss, personal injury, death or damage arising out of or in connection with an act or omission of the Supplier in supplying the Goods/Services or any and all obligations or warranties under these conditions.

9. General

- (a) The Supplier must not assign the benefit of the Purchase Order without *Muswellbrook Shire Council* prior written approval.
- (b) No variation of the Purchase Order will be binding on *Muswellbrook Shire Council* unless in writing and signed by a duly authorised representative of *Muswellbrook Shire Council*.
- (c) *Muswellbrook Shire 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.

10. 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 \$20,000,000 (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.
- (e) Workers Compensation;

11. WH&S and Work Cover regulations

All suppliers and contractors must comply with current WHS legislation.