

## Purchase terms

The following document contains the Conditions of Contract, which together with a completed Purchase Order constitute a binding legal contract between the Corporation and the Supplier.

The Supplier acknowledges that the Supplier has read and understood the Conditions of Contract set out on this website and accepts the Conditions of Contract as binding.

The Supplier acknowledges and agrees that the Conditions of Contract will be deemed to have been perused and accepted and are binding on the Supplier on the acceptance of a Purchase Order by the Supplier.

## Conditions of contract for supply of services, goods and materials

### 1. Definitions and Interpretation

In this Contract, unless something else is clearly indicated:

1.1 "Contract" means these Conditions of Contract for supply of services, goods and materials;

1.2 "Contract Documents" means this Contract together with the Purchase Order;

1.3 "Corporation" means the Corporation of the Eastern waste Management Authority

1.4 "Legislative Requirements" means the requirements of all Acts of Parliament of the Commonwealth or of the State of South Australia, all ordinances, rules, regulations, by-laws, proclamations and orders made or issued under any such Acts and all codes of practice, directions, orders and requirements of any governmental agency empowered to issue the same under any such Acts;

1.5 "Liabilities" means all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including reasonable legal fees and expenses), demands, claims and proceedings of any nature;

1.6 "Materials" means the goods or materials supplied by the Supplier to the Corporation as may be set out in a Purchase Order;

1.7 "Purchase Order" means the purchase order completed by the Corporation requesting the supply of the Services or Materials by the Supplier;

1.8 "Price" means the amount payable by the Corporation to the Supplier for the supply of the Services or Materials specified in the Purchase Order;

1.9 "Services" means the services to be provided by the Supplier to the Corporation as may be set out in a Purchase Order;

1.10 "Supplier" means the person or persons supplying services, goods or materials to the Corporation pursuant to a Purchase Order, and for the purposes of the Contract Documents includes employees, agents and contractors of such Supplier;

Unless otherwise provided in the Purchaser Order, all references to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities and dimensions and units shall be in terms of Commonwealth legal units.

## 2. Formal Contract Take Precedence

Where this Purchase Order is issued by the Corporation pursuant to an existing contract between the Corporation and the Supplier, the terms and conditions of that contract shall govern the rights and obligations of the parties with respect to the Purchase Order. In any other case, the Contract Documents will govern the legal relationship between the Corporation and the Supplier insofar as it applies to the subject matter of this Purchase Order.

## 3. Contract

The Contract Documents constitute the entire agreement between the Supplier and the Corporation, and where the Supplier provides the Corporation with an invoice or document containing conditions, the Suppliers' conditions do not have any effect or operation. If there is any inconsistency between the Purchase Order and this Contract, the terms of this Contract prevail.

## 4. General Scope of Contract

4.1 In relation to supply of Materials this Contract requires the Supplier to supply to the Corporation the Materials of description, nature, specification, quantities and size and at the Price specified in the Purchase Order and deliver such Materials to the Corporation at a place and in a manner specified in the Purchase Order or otherwise requested by the Corporation;

4.2 In relation to supply of Services, this Contract requires the Supplier to provide the Services of description, nature, specification and in the manner requested by the Corporation in the Purchase Order or otherwise requested by the Corporation in writing. The Services must be provided at such time and place and within such time period as may be set out in the Purchase Order or otherwise requested by the Corporation. All Services must at all times be provided by qualified and experienced personnel, with due care and skill in a reasonable, professional and prompt manner and meet all Corporation's specifications with respect to Services. The Services must be provided at the Price set out in the Purchase Order

4.3 Any supply of Materials or provision of Services by Supplier must comply with all applicable Legislative Requirements and The Supplier must supply appropriate facilities, materials, equipment and protective clothing (if applicable) necessary to carry out the Services.

## 5. Sub-Contractors

The Supplier shall not engage sub-contractors to perform any of its obligations under the Contract Documents without prior written approval of the Corporation which approval Corporation may refuse in its absolute discretion.

## 6. Quality

The quality of the Materials delivered, or the nature of Services provided shall not differ from that specified in the Purchase Order unless the change in quality is ordered by the Corporation in a written form specifically referring to amendments to the quality of the Materials.

## 7. Statutory Requirements

The Supplier shall ensure that in its supply and delivery of the Materials and its performance of the Services the Supplier fully complies with all Legislative Requirements. Where necessary, the Supplier shall secure all necessary approvals and pay all fees incurred in connection with the sale, supply or delivery of the Materials or the supply of Services to the Corporation. The Supplier indemnifies and

will keep indemnified the Corporation against any Liabilities arising out of Supplier's failure to comply with this clause 7.

## 8. Standards of Materials or Services

8.1 The Supplier warrants that all Materials and Services comply with any relevant;

8.1.1 Australian Standards;

8.1.2 where no such Australian Standards exist, standards published by the International Organisation for Standardisation ("ISO"); or

8.1.3 where no such Australian Standards or standards published by ISO exist, a standard reasonably expected for the relevant industry,

(together, the "Standards").

8.2 If the Corporation procures any Materials or Services which would, if delivered as described in the Purchase Order, fall below the Standards, the Supplier must provide the Corporation written notification identifying:

8.2.1 which components of the Materials or Services would fall below the Standards;

8.2.2 a description of the particular feature that would cause the Materials or Services to fall below the Standards; and

8.2.3 a reference to the full text of each relevant Standard.

8.3 Following the process set out in clause 8.2, the Corporation may (in addition to any other rights the Corporation may have):

8.3.1 amend any descriptions of the Materials or Services in the Purchase Order to ensure the Materials or Services meet the Standards; or

8.3.2 direct the Supplier in writing to deliver the Materials or Services according to the original Purchase Order.

8.4 If the Corporation proceeds under clause 8.3.1, the Supplier must provide reasonable assistance in the process set out in that clause at no extra cost to the Corporation.

8.5 If the Corporation proceeds under clause 8.3, the Supplier may not commence work on the Materials or Services until it receives written direction as set out in that clause.

## 9. Delivery

9.1 Delivery of Materials shall be made to such locations and at such times as shall be nominated by the Corporation.

9.2 Upon delivery, the Materials shall be accompanied by a delivery document with the Corporation's order number specified. A separate invoice shall be delivered to the Corporation within three (3) days of delivery which shall state clearly the contents of the delivery.

9.3 The Price shall be inclusive of all freight insurance and other charges connected to forwarding the Materials to the Corporation.

9.4 All elements of the Materials delivered by the Supplier shall be at the risk of the Supplier. No liability to pay for Materials shall arise until that element of the Materials are approved by the Corporation and delivery is accepted in writing or by counter-signature.

9.5 Upon return of any such element of the Materials which is not acceptable to the Corporation, the Supplier shall reimburse the Corporation for:

9.5.1 Any amounts paid by the Corporation on account of the Price of the returned element of the Materials; and

9.5.2 Any costs incurred by the Corporation in connection with the delivery or return of the relevant element of the returned Materials.

## 10. Invoicing & Payment

10.1 The Supplier must provide an invoice (in a PDF electronic file) to the email address "accounts@eastwaste.com" to the Corporation on the completion of the Services specifying the relevant Purchase Order number.

10.2 The Corporation shall pay, by electronic funds transfer, the Price to the Supplier by the last business day of the calendar month following the month in which the invoice is dated provided that the Materials are supplied and the Services are provided in the manner set out in the Contract Documents.

## 11. Acceptance of Goods

The Corporation shall only be obliged to accept delivery of such of the Materials as comply with the Contract Documents and if the delivery of the Materials shall not comply with the Contract Documents in any respect, then the Supplier shall, if so required by the Corporation, remove all such rejected elements of the Materials and replace them with a delivery of the Materials acceptable to the Corporation. All freight, insurance and other charges whatsoever in connection with the return of that element of the Materials wrongly supplied and the delivery of a further supply of the Materials shall be paid and borne by the Supplier.

## 12. Testing

12.1 The Corporation may require, as a condition of delivery of any element of the Materials, the Supplier to supply a sample of the relevant Materials for testing and approval by the Corporation. In the event that such a sample is produced and approved, then any delivery of that element of the Materials which is referable to the sample shall be of a size, nature and quality consistent with that of the approved sample. In the event that such a sample is rejected by the Corporation, the Supplier must remove the Materials and supply the Materials to the satisfaction of the Corporation, at Supplier's cost.

12.2 The Corporation may monitor the Supplier's performance of the Services. If, after monitoring the Services, the Corporation is dissatisfied with the Supplier's performance of the Services the Corporation may:

12.2.1 request that the Supplier at its cost provide the Services to the satisfaction of the Corporation; or

12.2.2 procure the Services from a third party and set-off the cost of procuring the Services from the third party and the cost of monitoring the Supplier's performance of the Services pursuant to this Contract.

### 13. Set Off

The Corporation is entitled to deduct from amounts otherwise payable to the Supplier by the Corporation any amount due from the Supplier to the Corporation pursuant to the terms of this Contract.

### 14. Property in the Materials

Where any part of entire payment for any element of the Materials is made by the Corporation the entire title to a property shall pass without exclusion or limitation but subject to the Corporation's right to subsequent rejections in the event that the relevant element of the Materials is discovered to not comply with the terms of the Contract Documents.

### 15. Variation

Any variations to the Purchase Order must be in writing and signed by both the Corporation and the Supplier

### 16. Warranty

16.1 The Supplier warrants that it has full power to enter into the Contract Documents and perform its obligations under the Contract Documents.

16.2 The Supplier warrants in addition to any warranty or guarantee implied by law that all of the Materials delivered to the Corporation:

16.2.1 Will conform to the relevant description of the Materials contained in the Contract Documents;

16.2.2 Shall be of good merchantable quality and fit for the known purpose for which it is sold;

16.2.3 Are new (unless otherwise specified);

16.2.4 Are free from all liens and encumbrances and the Supplier has a good marketable title to the Materials;

16.2.5 Shall be delivered by the due delivery date specified on the order.

16.3 The Supplier warrants that:

16.3.1 in the supply of the Services it will not do any act, matter or thing prejudicial to the goodwill, commercial reputation or public image of the Corporation;

16.3.2 it will supply the Services with all due care and skill in accordance with any legal requirements;

16.4 The Supplier warrants that in the supply of any of the Services or Materials it will not infringe any intellectual property rights.

### 17. Indemnity

The Supplier indemnifies and will keep indemnified the Corporation with respect to any Liabilities of any kind whatsoever (including personal injury or death of any person or damage to property of any person or the Corporation) resulting from or connected with the Supplier's supply of the Services or the Materials to the Corporation, including those arising out of or in connection with the breach of

the Contract Documents by the Supplier, or any act or omission (including negligent act or omission) of any act or omission or wrongful conduct) of the Supplier, its employees, contractors or agents.

#### 18. Legal Relationship

The Supplier will at all times remain an independent contractor of the Corporation and at no time is to be construed as an employee of the Corporation.

#### 19. Jurisdiction

The laws in force in the State of South Australia shall apply to this Contract and the parties shall submit to the jurisdiction of the courts of South Australia.

#### 20. Assignment

The Supplier shall not, without the prior written approval of the Corporation, assign the Contract or assign, mortgage, charge, encumber and of the moneys payable under this Contract.

#### 21. Part Acceptance Offer

Where the Corporation has accepted any element of the Materials that constitute part of a Purchase Order the Corporation shall pay the Supplier that part of the Price attributable to that element of the Materials accepted.

#### 22. No Waiver

No failure or delay on the part of a party to exercise any right or remedy available to it shall operate as a waiver of any right or remedy nor shall any single or partial exercise of any such right or remedy preclude any other further exercise of any right or remedy.

#### 23. Special Conditions

Any special conditions that the Corporation shall incorporate on the Purchase Order shall be incorporated into this Contract and in the event of any inconsistency with the terms of this Contract the special conditions prevail.

#### 24. Time of the Essence

Time shall be of the essence as regard to any date or period under this Contract.

#### 25. Goods and Services Tax

Definitions:

- "GST" has the same meaning it does in section 195-1 of the GST Act;
- "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 and any related or similar legislation;
- "Supply" has the same meaning it does in section 9-10 of the GST Act and excludes and "GST free supplies" and "input taxed supplies" as those terms are defined in section 195-1 of the GST Act;
- "Recipient" and "Supplier" have the respective meanings ascribed to those terms in the GST Act.

#### 26. Occupational Health and Safety Requirements for Supply of Services

Prior to the commencement of any work the engaged contractor must ensure that the appropriate steps are taken by those who control and do the work, to identify all reasonably foreseeable hazards associated with or incidental to the contracted work and worksite. Assessment of risk must be made of any identified hazard, and, on the basis of that risk assessment control measures must be put in place to eliminate or minimise any risk. A record of the outcome of that process is to be made available to ACC upon request.

By order of East Waste

GENERAL MANAGER