

FORESTRY CORPORATION OF NSW PROCUREMENT TERMS & CONDITIONS

1. GENERAL

- 1.1. These Terms and Conditions apply to the order for goods (“Goods”) or services (“Services”) placed by Forestry Corporation of NSW (FCNSW) as described in the attached purchase order (“Purchase Order”) with the supplier of the Goods or Services (“Supplier”).
- 1.2. They are to be read in addition to any terms specified by FCNSW in the Purchase Order and/or any attachment to it that is expressly incorporated in writing. No other terms or conditions apply to this Purchase Order or to the Goods or Services under any circumstances except where:
 - a) FCNSW first provides its agreement in writing; or
 - b) these terms are replaced by a longer form agreement on FCNSW terms and conditions in which case the terms of that agreement will apply between the parties.
- 1.3. No amendments to these Terms and Conditions will be binding on the parties unless approved in writing by a FCNSW representative with the actual delegated authority to approve any such amendments as notified by FCNSW from time to time.

2. OFFER AND OFFER ACCEPTANCE

- 2.1. The Supplier is taken to have accepted a Purchase Order if it notifies FCNSW that it accepts the Purchase Order or delivers the Goods and/or Services described in the Purchase Order.
- 2.2. If the Supplier is unable or unwilling to accept the Purchase Order, it must notify FCNSW promptly. It may propose a variation to the Purchase Order, or offer other Goods and/or Services in substitution, but any such variation or substitution must be approved by the FCNSW requester in writing before delivery.
- 2.3. The Purchase Order once accepted, combined with these Terms and Conditions and any terms and conditions in the Purchase Order and/or any attachment expressly incorporated in writing, will form a binding agreement between the parties (“Agreement”).

3. CANCELLATION AND CHANGES

- 3.1. FCNSW may at any time before delivery change or cancel the Purchase Order.
- 3.2. If the Supplier has already incurred expense in arranging for the order or delivery of the Goods and/or Services specified in the first Purchase Order, FCNSW agrees to pay the Supplier’s reasonable and demonstrable costs or expenses incurred. The Supplier must mitigate any such costs or expenses.

- 3.3. If FCNSW changes the Purchase Order and any change causes an increase or decrease in the cost of the Goods and/or Services, or time required to deliver the Goods and/or Services, an equitable adjustment must be made to the Fees which is appropriate to the circumstances.

4. TERMINATION

- 4.1. FCNSW may terminate this Agreement if the Supplier breaches this Agreement and does not remedy the breach within seven days of FCNSW notifying of that breach.
- 4.2. FCNSW will not in any circumstances be liable for any consequential loss or loss of profits suffered by the Supplier as a result of this Agreement terminating.

5. CORRECTIONS

- 5.1. The Supplier must, at their cost, remedy any defect in the Supplies within 30 days of being notified by FCNSW. If the Supplier fails to do so, FCNSW may, at the Supplier's expense, arrange for a third party to undertake the remedial work or return the Supplies to the Supplier. The Supplier must refund the full price of the returned Supplies.
- 5.2. If the Supplier fails to provide any agreed deliverable, or complete any agreed milestone, the Supplier must use all reasonable endeavours to correct the issue which caused the failure, at no additional cost to FCNSW.

6. DELIVERY, ACCEPTANCE AND TITLE

- 6.1. Unless otherwise specified as such in the Purchase Order, time will be of the essence with respect to the Supplier's delivery obligations under this Agreement. The Supplier must deliver the Goods and Services as set out in the Purchase Order in accordance with the time periods for delivery specified in the Purchase Order.
- 6.2. The Supplier must ensure that all invoices, packing slips and other documents have a Purchase Order number, description and the name of FCNSW representative. FCNSW will not accept the Supplies nor pay for them unless the order number is included on the Supplier's documentation.
- 6.3. Payment of any invoice by FCNSW will not be deemed acceptance of any Goods and/or Services, but rather such Goods and/or Services will be subject to a 4-month period of inspection, testing, acceptance or rejection by FCNSW. If FCNSW rejects any Goods and/or Services within such 4-month period, an equitable adjustment must be made to the Fees to reflect non-delivery (the Supplier must refund FCNSW accordingly).
- 6.4. The Supplier will bear the cost of storing, handling and returning any Supplies that FCNSW does not accept.
- 6.5. Title and risk in the Goods will pass to FCNSW when they are delivered to FCNSW.

7. SUB-CONTRACTING

- 7.1. Except as expressly provided in the Purchase Order, the Supplier may not sub-contract any obligations under this Agreement without the prior written consent of FCNSW.

- 7.2. Where the Supplier sub-contracts any of its obligations under this Agreement, the Supplier remains liable for the carrying out and completion of those obligations.

8. PRICE AND PAYMENT

- 8.1. The Supplier's quoted price is fixed and inclusive of all taxes, including GST, insurance, freight and delivery costs including costs associated with the return of Supplies wrongly supplied or defective Supplies.
- 8.2. Provided that FCNSW has accepted the Supplies, FCNSW will pay a Small Business Supplier (<M\$2 annual turnover) within 30 days of receiving a valid tax invoice and any other information requested. If not a Small Business, payment will be within 30 days from end of the month of receipt of a valid tax invoice and any other information requested.
- 8.3. Please send tax invoices by email to accounts.payable@fcnsw.com.au or by post to PO Box 100 Beecroft 2119.
- 8.4. Please address any complaints about late payments to the Accounts Complaints Officer on 02 9872 0104.

9. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIAL INFORMATION

- 9.1. Subject to clause 9.2, all rights, title and interest in any intellectual property ("IPRs") created in providing the Goods and/or Services ("Project IPRs") will be owned by FCNSW, and to the extent needed, the Supplier hereby assigns all rights, title and interest it may have now or in the future in those Project IPRs to FCNSW.
- 9.2. The IPRs owned by a party prior to the date of this Agreement ("Background IPRs") remain with the contributing party.
- 9.3. The Supplier grants to FCNSW a perpetual, irrevocable, royalty-free worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, modify, publish, adapt, or communicate to the public and exploit the Supplier's Background IPRs in conjunction with the Goods and/or Services, and the Project IPRs. The Supplier must provide FCNSW will all necessary documentation and materials to take advantage of this licence.
- 9.4. Each party ('recipient') must keep any information that disclose to it that is confidential by its nature or provided on a confidential basis ("Confidential Information") confidential and must not deal with it in any way that might prejudice its confidentiality. These obligations continue indefinitely beyond the end of this Agreement, but do not extend to disclosures:
- a) required by law (including under the Government Information (Public Access) Act 2009); and
 - b) b) to a recipient's officers or employees:
 - i. i) who have a need to know for the purposes of this Agreement (but only to the extent that each has a need to know); and
 - ii. ii) before disclosure, have been directed by the recipient to keep that Confidential Information confidential.
- 9.5. The Supplier must comply with, carry out and discharge the obligations contained in the information privacy principles set out in sections 8 to 19 of the Privacy and Personal

Information Act 1998 (NSW) as if it were FCNSW carrying out and discharging those obligations. The Supplier must notify FCNSW as soon as possible upon it becoming aware of a breach of these obligations.

- 9.6. If a third party claims, or FCNSW reasonably believes that a third party is likely to claim, that all or part of IPR supplied to FCNSW by the Supplier (“Warranted Materials”) infringe their Intellectual Property rights or breach their confidence, the Supplier must, in addition to the indemnity under this Agreement and to any other rights that FCNSW may have against it, promptly, at the Supplier's expense:
- a) use its best efforts to secure the rights for FCNSW to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
 - b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the IPRs of any other person without any degradation of the performance or quality of the affected Warranted Materials.

10. INDEMNITY, INSURANCE AND WARRANTIES

- 10.1. The Supplier must indemnify FCNSW, its employees and agents and the State of NSW against any claim, loss or expense (including arising out of personal injury, death, damage to property or infringement of intellectual property rights) which any of them pays, suffers or is liable for (including legal costs) arising out of the Supplier or any of the Supplier’s employees, contractors or agents unlawful, negligent, reckless or deliberately wrongful acts or omissions in providing the Supplies, performing this Agreement or breaching this Agreement.
- 10.2. The Supplier indemnifies FCNSW against all Losses it directly or indirectly sustains or incurs as a result of:
- a) Any negligent, unlawful or willful act or omission of the Supplier, Supplier personnel or Supplier subcontractors;
 - b) Any infringement or claimed infringement of the IPRs or moral rights of a third party arising out of its receipt or use of the Goods and / or Services;
 - c) Death or personal injury of any person to the extent caused by the Supplier;
 - d) Property damage to the extent caused by the Supplier;
- 10.3. The Supplier must hold appropriate insurance, including Public and/or Product Liability insurance, to cover all risks for the Supplies provided, and Workers Compensation insurance.
- 10.4. The Supplier represents and warrants that:
- a) it has all rights, title, licences, interests and property necessary to provide the Goods and/or perform the Services;
 - b) the Supplier personnel will have all necessary experience, skill, knowledge and competence to perform the Services, and the Services will be performed in accordance with good industry practice;
 - c) the Goods and/or Services will be fit for the purposes intended;
 - d) if applicable, the Goods and/or Services will meet any agreed design and performance criteria and correspond with any sample;
 - e) the Goods will be complete, accurate and of merchantable quality;

- f) it is entitled to grant any licence of Intellectual Property to FCNSW under this Agreement;
- g) FCNSW use of any Warranted Materials will not infringe the IPRs of any person; and
- h) it will supply to FCNSW in English all complete, accurate and up-to-date documentation associated with the use of the Goods and/or Services.

11. WORK HEALTH AND SAFETY (WHS)

- 11.1. The Supplier must undertake its own identification and analysis of all WHS risks associated with the Supplies.
- 11.2. The Supplier must ensure the health and safety of all people whom the Supplier's activities may affect under this Agreement are in compliance with WHS laws.
- 11.3. The Supplier warrants and represents that it has (and will ensure that its subcontractors have) the necessary resources in place to comply with WHS laws; and taken all necessary measures to assess and eliminate or control risks arising from hazards associated with the Supplies.

12. MISCELLANEOUS

- 12.1. This Agreement is governed by the laws of New South Wales.
- 12.2. Each party agrees to execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as may be reasonably necessary to give effect to this Agreement. The Supplier agrees to cooperate and work with third party suppliers of FCNSW to the extent necessary to give effect to this Agreement.
- 12.3. FCNSW reserves the right to retain other persons or entities to supply the Goods and/or Services, including but not limited to any part of the Goods and/or Services.
- 12.4. The Supplier may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of FCNSW.
- 12.5. A provision of this Agreement or a right created under it may not be waived or varied except in writing, signed by the party or parties intended to be bound. A failure of a party to exercise a right arising out of this Agreement does not constitute a waiver of that right.
- 12.6. The Supplier must comply with any applicable FCNSW or NSW Government policies and procedures as notified by FCNSW to the Supplier from time to time.
- 12.7. If required to do so whether under the Government Information (Public Access) Act 2009 or otherwise, the Supplier agrees that FCNSW has the right to publish details of this Agreement and/or the Agreement itself in the manner set out in the applicable requirements.
- 12.8. If there is an inconsistency between a provision of:
 - a) a longer form NSW Government contract entered into between the Supplier and FCNSW for the Goods and/or Services described under the Purchase Order;
 - b) these Terms and Conditions;
 - c) any terms and conditions added to the Purchase Order;
 - d) any annexures or attachments to the Purchase Order,

then the first-mentioned terms shall prevail in the order set out.

12.9. In this Agreement:

- a) references to the singular includes the plural and vice versa; and
- b) references to person or individuals include that person's successors, administrators, executors and assigns and a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency.

VERSION CONTROL TABLE

Version	Date	Author	Change Description
1	30/1/17	Dallas Palm	Approved by David Giles
2	16/2/17	Dallas Palm	Amended s8.2
3	13/9/17	Dallas Palm	Minor updates
4	15/12/17	Dallas Palm	Minor updates