



Southern Metropolitan Cemeteries NSW

Purchasing Terms and Conditions

1. General

- 1.1. These purchasing terms and conditions (“**Terms and Conditions**”) apply to the supply of Goods and Services (the “**Deliverables**”) provided to Southern Metropolitan Cemeteries Land Manager ABN 13 806 606 081 (“**SMCLM**”) by you, the supplier.
- 1.2. There may be additional terms and conditions in a separate contract between you and SMCLM. If there is any inconsistency or conflict between the terms and conditions of the contract and the Terms and Conditions, then the terms and conditions of the contract prevail to the extent any such inconsistency or conflict.
- 1.3. No other terms or conditions, nor any variations, apply unless agreed in writing.
- 1.4. Your provision of the Deliverables constitutes your acceptance of the Terms and Conditions.

2. Price and Payment

- 2.1. Your quoted price is fixed and inclusive of all taxes, including GST, insurance, freight and delivery costs including costs associated with the return of Deliverables wrongly supplied or defective Deliverables.
- 2.2. Provided that SMCLM has accepted the Deliverables, SMCLM will pay you within 30 days of receiving a valid tax invoice and any other information requested.
- 2.3. Please send tax invoices by email to accounts@smcnsw.org.au.
- 2.4. Please address any inquiries about payments by contacting us on **02 9545 4677** or **02 9661 5655**.

3. Delivery and Acceptance

- 3.1. You must provide the Deliverables on the date, time and place specified by SMCLM. Time is of the essence.
- 3.2. You assume all risk in the Deliverables until the SMCLM accepts them. SMCLM will usually inspect the Deliverables on delivery and, if satisfied that they meet the specifications, will accept them. Title to the Deliverables transfers to SMCLM when SMCLM accepts the Deliverables.
- 3.3. You bear the cost of storing, handling, and returning any Deliverables that SMCLM does not accept.
- 3.4. You must ensure that all invoices, packing slips and other documents have an order number, description and the name of the SMCLM representative. SMCLM may not accept the Deliverables nor pay for them unless the order number is included on your documentation.



4. Warranties

- 4.1. You warrant that, when title in the Deliverables passes to SMCLM, the Deliverables will: be free from any charge, liability or defect; comply with all applicable standards; be fit for purpose; and conform to the description ordered.
- 4.2. You must provide SMCLM with the benefit of any third-party warranties for the Deliverables.
- 4.3. You warrant that the Deliverables do not infringe the intellectual property rights of any third party.
- 4.4. You warrant that all personnel engaged to provide the Deliverables are appropriately qualified, competent and experienced and hold all necessary licences, permits and authorisations.

5. Corrections

- 5.1. You must, at your own cost, remedy any defect in the Deliverables within 7 days of being notified by SMCLM.
 - 5.1.1. If you fail to provide any agreed deliverable, or complete any agreed milestone, you must use all reasonable endeavours to correct the issue which caused the failure, at no additional cost to SMCLM.
 - 5.1.2. If you fail to do so, SMCLM may, at your expense:
 - 5.1.2.1. arrange for a third party to undertake the remedial work or
 - 5.1.2.2. return the Deliverables to you. You must refund the full price of the returned Deliverables.

6. Work, Health and Safety (WHS)

- 6.1. You must undertake your own identification and analysis of all WHS risks associated with the Deliverables.
- 6.2. You must ensure the health and safety of all people whom your activities may affect under these Terms and Conditions, in compliance with WHS laws.
- 6.3. You warrant and represent that you have (and will ensure that your 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 Deliverables.

7. Insurance and Indemnity

- 7.1. You must hold appropriate insurance, including public liability insurance, to cover all risks for the Deliverables provided.
- 7.2. By agreeing to supply SMCLM the agreed goods and services you hereby **RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, AND AGREE TO HOLD HARMLESS** SMCLM, its board, officers, servants, agents, volunteers and employees **FREE FROM AND AGAINST ANY AND ALL LIABILITIES, LOSS OR EXPENSE, CLAIMS, DEMANDS, OR INJURIES, INCLUDING DEATH**, that may be sustained by you or an associated party in connection with the performance of the agreement.

8. Termination

- 8.1. Subject to clause 5.1 SMCLM may terminate the agreement with you if you fail to remedy the breach of these terms and conditions.
- 8.2. SMCLM will not in any circumstances be liable for any consequential loss or loss of profits suffered by you as a result of any agreement with you terminating.



9. Publicity

- 9.1. You may only make press or other announcements or releases or social media comment about the Deliverables or any related SMCLM purchase order or any agreement that is subject to the Terms and Conditions or any related transaction:
- 9.1.1. with the express, written approval of SMCLM; or
- 9.1.2. as required to be made by law provided that you give SMCLM as much prior notice as is reasonably practicable and the opportunity to review and comment on the form and text of the disclosure before the disclosure is made.

10. Other

- 10.1. You may not transfer any agreement between SMCLM and you that is subject to the Terms and Conditions, nor subcontract your obligations, without SMCLM's prior written consent.
- 10.2. The rights and remedies under the Terms and Conditions are in addition to, and do not limit, any other rights of SMCLM at law.
- 10.3. If a provision of these terms is void, voidable, unenforceable, or illegal then that specific section may be severed, amended, or ratified and the remainder of these terms will not be affected.
- 10.4. The construction, validity and performance of any Agreement incorporating these terms and conditions shall be governed by the laws of the State of New South Wales. Both parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales.
- 10.5. Any notice, demand, consent, or other communication required to be given to either of us must be delivered personally or sent by prepaid mail or by email to the address of the other last notified.
- 10.6. Any dispute or disagreement as to the interpretation or application of the terms must be mediated between the parties. The parties agree to make every effort to settle any dispute prior to taking formal legal action.



Reference	SMC-OCEO-PRC-1	Document owner	OCEO	Revision No.	2
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