

PURCHASING TERMS AND CONDITIONS

1 Agreement

- (a) The entire agreement between the parties is comprised of the Purchase Order, these Purchasing Terms and Conditions and any other documents expressly referred to in the Purchase Order (**Agreement**). If there are inconsistencies or ambiguities between documents comprising the Agreement, Council will direct the Supplier as to the interpretation to be followed and the Supplier must comply with the direction and will not be entitled to Claim as a result of the direction.
- (b) The Supplier is deemed to have accepted the terms of this Agreement (and the Agreement shall be binding) when both of the following have occurred:
- (i) the Supplier has received Council's written or verbal confirmation to perform the Supply; and
 - (ii) the Supplier has received a Purchase Order number from Council.

and the Supplier irrevocably accepts that only the documents set out in clause 1.1(a) shall form part of the Agreement (unless there are any Variations making alterations to those documents). The parties agree that the terms and conditions of the Agreement apply notwithstanding and to the exclusion of any subsequent terms and conditions issued by the Supplier (including without limitation on any order confirmation or similar document). The Supplier citing the Purchase Order number of Council in any correspondence is confirmation of the acceptance by the Supplier of this Agreement.

2 Warranties

- (a) The Supplier represents and warrants to Council that it has:
- (i) carefully examined and acquired actual knowledge of the contents of information made available by Council;
 - (ii) made investigations and assessments of the work, risks, contingencies and circumstances involved in performing the Supply and it has reviewed all information Council has made available and is otherwise obtainable by reasonable enquiries, in relation to the Supply;
 - (iii) satisfied itself that the Price covers the cost of complying with all obligations under the Agreement; and
 - (iv) the necessary authority and power to enter into the Agreement and to perform the obligations under it.
- (b) The Supplier warrants to Council that the Supply will:
- (i) match the description of the Supply ordered by Council and comply with any specifications supplied by Council;
 - (ii) comply with any applicable laws, regulations, licences, permits, approvals and Australian Standards; and
 - (iii) be fit for the purpose(s) described in the Agreement or which Council has otherwise made known to the Supplier, or in the absence of such expressed purpose, be fit for the purposes for which goods or services of the same kind as the Goods or Services are commonly procured.
- (c) Any review, comment, approval or non-approval by Council of the Supply, including without limitation any documents provided by the Supplier, does not relieve the Supplier of its obligations or liabilities under the Agreement.

3 Goods

- (a) The Supplier warrants that any Goods supplied will:
- (i) correspond with any sample the Supplier provided to, or showed to, Council prior to or after an order is issued by Council;
 - (ii) be new, of merchantable quality and free from defects in materials and workmanship; and

- (iii) be free from all liens, charges and encumbrances of any kind and that the Supplier is able to pass good title to the Goods.
- (b) Delivery of Goods will have occurred only when the Supplier has:
- (i) delivered the Goods to the Site in accordance with the Agreement and (unless otherwise agreed) unloaded the Goods at the part of the Site designated by Council;
 - (ii) received a delivery receipt from Council's Site personnel for the Goods delivered; and
 - (iii) provided all installation instructions, maintenance and operating manuals, engineering data, spare parts lists and other information as reasonably required for the installation, operation and maintenance of the Goods.
- (c) The Supplier must properly pack and protect any Goods to ensure they are not damaged during delivery, unloading and storage at the Site.
- (d) Risk in the Goods only passes to Council upon delivery of the Goods in accordance with clause 3(b) subject to risk passing back to the Supplier for any period when the Goods are made available by Council for the purposes of clauses 5(b)(iii) and 5(b)(v).
- (e) Unencumbered title to the Goods passes to Council on payment or delivery (whichever occurs first).
- (f) Neither the *Sale of Goods Act 1986* (Qld) (or similar legislation in any other jurisdictions) nor any international conventions or recognised customs in relation to rules that may otherwise apply for or in respect to the international sale of goods, have any application to any matter in connection with the Agreement.

4 Services

- (a) The Supplier warrants that any Services provided will:
- (i) be performed with skill, care and diligence; and
 - (ii) by appropriately qualified, licensed, skilled and trained personnel.
- (b) Completion of Services will have occurred only when the Supplier has:
- (i) delivered the Services in accordance with the Agreement;
 - (ii) received approval of the Services from the Council Representative; and
 - (iii) delivered all deliverables in accordance with the Agreement.

5 Defects

- (a) The Supplier must, at its cost, rectify any Defect while carrying out the Supply and during any applicable Defects Liability Period.
- (b) Without limiting clause 5(a), Council may direct the Supplier to, at the Supplier's cost and risk, do any one or more of the following as determined by Council in its absolute discretion:
- (i) take such steps as are necessary to ensure that the Goods or Services comply with the Agreement;
 - (ii) refund to Council any payments made by Council in respect of the Defective Goods or Services;
 - (iii) re-take possession of any Defective Goods and refund the Price for the Defective Goods to Council;
 - (iv) repair any Defective Goods or Services; or
 - (v) collect and deliver replacements of any Defective Goods, or re-perform any Defective Services.
- (c) If any Defect is not rectified within five (5) Business Days of a direction by Council, Council may itself or by others, rectify the

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Defect and the cost of remedying the Defect will become a debt due and payable to Council from the Supplier.

- (d) Any repaired or replaced Goods provided by the Supplier or any re-performed Services are subject to the same warranties as the original Goods or Services, from the date of repair, replacement or re-performance and the Defects Liability Period will recommence from such date.
- (e) Any loss or damage that Council has incurred as a result of any Defect will be a debt due and payable to Council.

6 Completion

- (a) The Supplier must:
- (i) deliver the Goods by the Completion Date; and/or
 - (ii) complete the Services by the Completion Date, and carry out the Supply expeditiously and without delay.
- (b) If the Supplier believes that anything may delay the progress of the Supply, the Supplier must notify Council with details of the estimated extent of the delay and the cause.
- (c) Subject to clauses 6(d) and 6(d), the Supplier will only be entitled to an extension of time to the Completion Date where:
- (i) the Supply is delayed by an act, default or omission of Council or its personnel in Council's capacity as a party to the Agreement which prevents the Supplier completing the Supply by the Completion Date (**Qualifying Cause**);
 - (ii) the Supply is not concurrently delayed (in whole or to the extent of any part) by a cause other than a Qualifying Cause; and
 - (iii) within five (5) Business Days after commencement of the Qualifying Cause, the Supplier gives notice to Council setting out the Qualifying Cause, the delayed activities and the extension of time to the Completion Date claimed.
- (d) Provided the requirements of clause 6(c) are satisfied, Council will determine (acting reasonably) the period of delay caused by the Qualifying Cause and extend the Completion Date by that period. If the Supplier does not make a Claim for an extension of time within the time or in the form specified in clause 6(c), the Supplier is not entitled to an extension of time for any delay and shall have no Claim.
- (e) Council may in its absolute discretion (without obligation), at any time and for any reason it thinks fit, extend the Completion Date. This right is solely for Council's benefit and may be exercised in its absolute discretion.

7 Site matters

- (a) Entry to the Site by the Supplier and its personnel is at their own risk. To the extent permitted by law, Council will not be responsible for any loss of or damage to property or for any personal injury or death to persons while on the Site.
- (b) When accessing the Site, the Supplier must comply with all policies and procedures relating to the Site.
- (c) If the Supply constitutes 'building work' for the purposes of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**), the Supplier must supervise and manage the performance of the Supply (including any performed by subcontractors) personally or by a competent representative and must otherwise comply with the requirements in sections 43 and 43A of the QBCC Act.
- (d) Council may direct the Supplier to have removed from the Site or any activity in respect to the Supply, any of the Supplier's personnel

engaged in the Supply who, in Council's opinion, is incompetent, guilty of misconduct or for any other reason notified to the Supplier.

- (e) The Supplier must coordinate the Supply on the Site with activities of Council, Council's personnel and any other contractors and has no entitlement to any Claim for doing so or for any impact of interference caused to the Supplier or that part of the Supply required to be performed on the Site.
- (f) The Supplier must avoid disruptions or inconvenience to the usual and safe operations of the Site and the users of the Site, except to the extent expressly permitted by the Agreement.
- (g) The Supplier must take all necessary steps to prevent damage to property on or near the Site, avoid unnecessary interference with the passage of people and vehicles on or near the Site and prevent nuisance and unreasonable noise and disturbance on or near the Site.

8 Work health and safety

- (a) Without limiting any other clause, the Supplier must:
- (i) carry out the Supply in a safe manner;
 - (ii) undertake and provide certification of Council's mandatory online training on the Council website;
 - (iii) comply with, and do all things necessary to enable Council to comply with, all laws relating to WHS;
 - (iv) comply with lawful directions issued by persons with control of the Site pursuant to any laws relating to WHS;
 - (v) have documented safe work practices and procedures for the Supply;
 - (vi) provide its personnel with personal protective equipment, inductions, information, instruction, training and supervision to ensure their health and safety;
 - (vii) provide, when requested by Council, evidence of its compliance with any laws relating to WHS; and
 - (viii) immediately notify Council of accidents involving its personnel.
- (b) If urgent action is necessary to protect the Supply, property or people, and the Supplier fails to take the action, Council may take the necessary action and costs incurred by Council in performing those actions will be a debt due and payable to Council from the Supplier.

9 Statutory declaration

The Supplier agrees that:

- (a) at any time, Council may request the Supplier to provide a completed and signed statutory declaration (in a form and containing such detail as reasonably required by Council) from a current director of the Supplier confirming that the Supplier is solvent and not subject to any event set out in clause 15(b)(i); and
- (b) the Supplier must provide such completed and signed statutory declaration within three (3) Business Days of such a request.

10 Variation

- (a) Council may direct the Supplier at any time to vary, amend, increase, decrease, omit, change the timing of (including to accelerate), or change the quality, character or extent of the Supply (**Variation**). No Variation will invalidate the Agreement and the Supplier must comply with the Variation.
- (b) Council will determine the Price of each Variation:
- (i) by prior agreement between the parties;

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- (ii) by applying rates or prices (if applicable) in the Agreement; or
 - (iii) by applying reasonable rates or prices.
- (c) Council will not be in breach of the Agreement if it reduces the quantity or scope of the Supply ordered and thereafter engages a third party for that Supply.
- (d) Within three (3) Business Days of any request for a Variation, the Supplier must obtain written confirmation from Council before complying with the Variation. Compliance with this clause 10(d) is a condition precedent to any Claim, and Council shall have no liability for any Claim, in connection with the requested Variation to the extent the Supplier has failed to comply with this clause 10(d) (including without limitation any costs incurred prior to having obtained the written confirmation of Council).

11 Invoicing and Payment

- (a) Council will, subject to the terms of the Agreement, pay the Supplier an amount not exceeding the Price. The Price is:
- (i) fixed and not subject to any adjustment whatsoever except to the extent expressly set out in the Agreement; and
 - (ii) inclusive of all costs relating to the supply of the Goods and/or the performance of the Services in accordance with the Agreement, including insurance, transport and delivery charges and taxes (other than GST).
- (b) The Supplier may only invoice Council after the delivery of the Goods in accordance with clause 3(b) and/or the completion of the Services. Invoices must include Council's Purchase Order number, Council's budget number (if any) and a detailed description of the Supply performed, the Price payable and any other information reasonably required by Council.
- (c) Subject to clauses 11(e) and 11(f), Council will pay the amount of invoices issued by the Supplier under clause 11(b) within thirty (30) days from the date of the receipt of invoice into Accounts section of Council, except where Council disputes the invoice, in which case:
- (i) Council will either:
 - (A) pay the undisputed part of the invoice (if any); or
 - (B) request that the supplier issue a revised invoice for the undisputed part of the invoice
 - (ii) if the resolution of the dispute determines that Council is to pay an amount to the Supplier, Council will pay that amount upon resolution of that dispute.
- (d) Council will respond to any 'payment claim' for the purposes of the SOPA, within the maximum time permitted for issuing a 'payment schedule' under SOPA.
- (e) Council may reduce any payment due to the Supplier under the Agreement by any amount for which the Supplier is or may be liable to Council. This does not limit Council's right to recover those amounts in other ways.
- (f) The Supplier must ensure all Claims for payment arising out of or in connection with the Agreement are issued by the Supplier to Council within twelve (12) months after the date upon which the Supply is completed (**twelve (12) Month Period**). Compliance with this clause 11(f) is a condition precedent to any Claim, and Council shall have no liability for any Claim to the extent it is made after the 12 Month Period.

12 GST

- (a) Capitalised terms in this clause 11 have the meanings given to them in the GST Act.

- (b) The consideration for a Supply made under or in connection with the Agreement does not include GST. If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- (i) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under the Agreement for that Supply); and
 - (ii) the Supplier must give the Recipient a Tax Invoice for the Supply.
- (c) If either party has the right under the Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with the Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified.

13 Indemnity

The Supplier indemnifies Council from any Claims, actions, proceedings, costs, expenses, losses and damages (including legal fees on an indemnity basis) incurred in connection with:

- (a) any loss of or damage to real or personal property caused by the Supplier or its personnel;
- (b) personal injury or death caused by the Supplier or its personnel;
- (c) a breach of any third party Intellectual Property Rights;
- (d) a breach of any laws in connection with the Agreement by the Supplier or its personnel; and
- (e) a breach of the Agreement by the Supplier or its personnel.

14 Insurance

- (a) The Supplier must effect and maintain at its own cost:
- (i) public liability insurance for an amount no less than \$20 million (except where a lesser amount is agreed with Council);
 - (ii) workers' compensation insurance as required by law;
 - (iii) third party comprehensive motor vehicle insurance; and
 - (iv) if consultancy Services are ordered by Council, or the Supplier is designing Goods for Council, professional indemnity insurance with a limit of liability of not less than \$10 million (except where a lesser amount is agreed with Council) that is to be maintained until six (6) years after the Completion Date.
- (b) The Supplier must provide Council with evidence of such insurances whenever requested by Council.

15 Termination

- (a) Council may terminate the Agreement for any reason in Council's absolute discretion on seven (7) days' written notice to the Supplier.
- (b) Council may terminate the Agreement immediately or take out of the hands of the Supplier the whole or any part of the Services remaining to be completed if:
- (i) the Supplier becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller, makes a statement or conducts itself in a manner from which it may reasonably be deduced that it is insolvent or is seeking to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the *Corporations Act*, stops or suspends (or threatens to stop or suspend) payment of all or a class of its debts, or anything analogous to these events;

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- (ii) the Supplier commits a default or breach of the Agreement and fails to remedy the default or breach within seven (7) days of being directed in writing to do so by Council; or
- (iii) the Supplier commits a breach that is not capable of remedy;
- (c) If Council exercises its rights under clause 15(a), the Supplier will only be entitled to its reasonable direct costs incurred up to the date of termination (capped at the Price) provided that Council receives unencumbered title to any Goods that are paid for in accordance with this clause 15(c). The Supplier will not be entitled to any loss of profit or other compensation.
- (d) If Council exercises its rights under clause 15(b), the Supplier will not be entitled to any Claim against, or compensation from, Council.
- (e) If Council terminates, or purports to terminate, the Agreement and it is subsequently held to be invalid, void or otherwise unenforceable then Council will be deemed to have terminated for convenience under clause 15(a) as at the same date and time as the original notice of termination. The Supplier's sole entitlement will be a payment (if any) under clause 15(c) and the Supplier waives any Claim it has, or would have had, but for this clause, arising out of or in connection with any termination, or purported termination, by Council under the Agreement or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.

16 Information and intellectual property

- (a) The Supplier must not disclose to any person, or use for any purpose other than carrying out the Supply, the contents of the Agreement and any other document or information obtained by the Supplier in the course of or in connection with carrying out the Supply (**Confidential Information**):
 - (i) without the prior written consent of Council; or
 - (ii) unless required by law.
- (b) The Supplier must immediately notify Council if the Supplier becomes aware of any unauthorised disclosure or use of the Confidential Information and return any Confidential Information (including copies) on the written request of Council.
- (c) The Supplier agrees unless Council expressly agrees otherwise, any information (whether documented or otherwise) supplied or made available to the Supplier by or on behalf of Council:
 - (i) is provided only for the Supplier's convenience; and
 - (ii) has not been and will not be relied upon by the Supplier for any purpose (including entering into or performing its obligations under the Agreement);
- (d) Council does not warrant, guarantee or assume responsibility in respect of such information (including its accuracy, completeness or adequacy for the purposes of the Agreement).
- (e) Council will not be liable to the Supplier in contract, tort, equity, under statute or otherwise arising from or in connection with the supplied information (including its inaccuracy or adequacy), the provision of the supplied information or the non-provision of any other information by Council.
- (f) The Supplier grants Council a transferable, irrevocable, royalty free licence, including the right to sub-licence, to use any material provided to Council in connection with the Agreement for use and enjoyment of the Supply, including (without limitation) any modification, repair or alteration of any Goods or Services.
- (g) The Supplier warrants that the Supply will not infringe any Intellectual Property Rights in Australia or any other country.

17 Personal Property Securities Act

- (a) If Council determines that the Agreement (or a transaction in connection with it) is or contains a Security Interest (as defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**)); the Supplier agrees to do anything Council may reasonably require for the purposes of enabling Council to:
 - (i) ensure that the Security Interest is enforceable, perfected and ranks ahead of other Security Interests;
 - (ii) apply for, and obtain, any registration or providing any notification in accordance with the PPSA; or
 - (iii) exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- (b) Except as expressly agreed in writing, the Supplier:
 - (i) acknowledges that neither the Agreement nor a transaction in connection with it is intended to provide a Security Interest in favour of the Supplier;
 - (ii) agrees that it will not register any Security Interest and will remove any registration in connection with the Agreement;
 - (iii) must promptly notify Council if it knows that a third party has or claims a Security Interest on a product of the Supply supplied or to be supplied by the Supplier to Council, owned by Council or in which Council has an interest;
 - (iv) must give Council information reasonably required by Council in relation to any such Security Interest or Claim; and
 - (v) must, on request by Council, use best endeavours to ensure that the third party discharges any such Security Interest and removes any registration in respect of any such Security Interest.

18 Quality assurance

Without limiting its other obligations under the Agreement, the Supplier must carry out the Supply in accordance with a quality assurance system which establishes the qualities and performance of the Supply including quality manuals, plans, management structures and other critical issues relating to quality assurance.

19 Dispute

- (a) If a dispute between the parties arises from or in connection with the Agreement (**Dispute**), neither party may commence court proceedings concerning the Dispute unless it has complied with this clause or the party seeks urgent injunctive or declaratory relief.
- (b) A party claiming a Dispute must notify the other party of the Dispute and specify the claim (**Dispute Notice**). A party served with a Notice of Dispute may give written response to the Notice of Dispute within twenty eight (28) days of the receipt of the Dispute Notice (**Response**).
- (c) Within forty two (42) days of service of a Dispute Notice, or within fourteen (14) days of the receipt of a Response, whichever is the earlier, the parties must confer to attempt to resolve the Dispute. Each party must be represented by a person having authority to agree to a resolution of the Dispute.
- (d) If the Dispute is not resolved under clause 19(c) within thirty (30) days, either party may commence litigation.
- (e) Each party must continue to perform its obligations under the Agreement despite the existence of a Dispute.

20 General

- (a) The Supplier must at its own expense obtain all requisite permits, approvals and licences and comply with all laws and regulations in connection with the Agreement.

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- (b) The Supplier must keep Council fully informed in respect to the Supplier's performance of the Agreement and provide to Council, as requested by Council, progress reports.
- (c) The Supplier must at its own cost supply all labour, tools, equipment and materials necessary for the Supply.
- (d) The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- (e) The Supplier must comply with all directions of Council.
- (f) The Agreement may not be amended, altered, supplemented or cancelled without the prior written consent of Council.
- (g) Where the Supplier comprises more than one entity, each will be jointly, severally and vicariously liable for the full performance of the Supplier's obligations under the Agreement.
- (h) The Supplier must not assign or subcontract its rights or obligation under the Agreement without the prior written consent of Council (and will be vicariously liable for the acts or omission of such subcontractors).
- (i) A right under the Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- (j) Where any provision of the Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in the Agreement.
- (k) The parties agree that the laws in force in the State of Queensland apply to the Agreement and both submit to the exclusive jurisdiction of the Queensland courts.
- (l) If any day on or by which a person must do something under the Agreement is not a Business Day, then the person must do it on or by the next Business Day.
- (m) No provision of the Agreement is to be constructed against the interests of Council because Council prepared the Agreement.

21 Definitions

In the Agreement:

Business Day means a day which is not:

- (a) Saturday or Sunday; or
- (b) a public holiday, bank holiday or special holiday in the place in which the Site is located.

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Agreement, the Supply or either party's conduct under the Agreement before or after it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute or in tort (including negligence).

Completion Date means the completion date specified in the Agreement, or if no date is specified in the Agreement, the completion date advised by Council.

Defects Liability Period means the period stated in the Purchase Order (if any) which commences on the date the Supplier completes the Supply (as determined by Council acting reasonably), or if there is no period stated in the Purchase Order, 12 months.

Defect or Defective means any part of the Goods and/or Services which does not comply strictly with the requirements of the Agreement or is otherwise unsatisfactory to Council.

Goods means goods ordered by Council as part of the Supply.

GST has the meaning given to that term in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any Confidential Information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

Price means the price or prices agreed between Council and the Supplier for the Supply as set out in the Purchase Order.

Services means services ordered by Council as set out in the Purchase Order or any Variation (if any).

Site means any site, location or place which is made available to the Supplier, by or on behalf of Council, in connection with the Supply (including without limitation any place for delivery of the Goods or performance of the Services).

SOPA means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

Council means Scenic Rim Regional Council ABN 45 596 234 931.

Supplier means the party stated in the Purchase Order who is responsible for carrying out and completing the Supply.

Supply means the supply of Services and Goods.

WHS means workplace health and safety.