

STANDARD TERMS AND CONDITIONS OF CONTRACT FOR PURCHASE OF GOODS OR SERVICES



1 GENERAL

1.1 These Townsville City Council Standard Terms and Conditions of Contract for Purchase of Goods or Services (**Terms and Conditions**) are the standard terms and conditions referred to in the Purchase Order.

1.2 Subject to clause 2.1, these Terms and Conditions apply to any contract entered into by the Council and the Supplier, whether as an offer or acceptance of an offer, to provide the Goods or Services.

1.3 Subject to clause 2.1 these Terms and Conditions will prevail in any conflict between them and the terms of offer or acceptance by the Supplier.

2 SPECIAL TERMS AND CONDITIONS

2.1 These terms and conditions do not apply where Council and the supplier have entered into a written Goods or Services Contract or other agreement specifying the terms and conditions which are to apply to the provision of these Good or services. Where any Special Terms and Conditions are included and they are inconsistent with these Terms and Conditions, the Special Terms and Conditions will prevail to the extent of the inconsistency.

3 DEFINITIONS

3.1 In these Terms and Conditions:

'Contract' means the contract between Council and the Supplier consisting of this Purchase Order, any specifications and / or the requirements of any Special Terms and Conditions;

'Council' means Townsville City Council;

'Goods' means the goods specified in the Purchase Order;

'Intellectual Property Rights' means all intellectual property rights, including copyright, patents, trademarks, designs, trade secrets, inventions, know-how, copyright, rights in circuit layouts and confidential information, any application for any of the foregoing rights and any rights of a similar nature;

'Material' means any material brought into existence as part of, or for the purpose of manufacturing the Goods or performing the Services and includes but is not limited to documents, equipment, information or data stored by any means;

'Purchase Order' means the document used by Council to purchase Goods or Services on behalf of the Council and which refers to Council's standard terms and conditions;

'Services' means the services specified in the Purchase Order;

'Special Terms and Conditions' means any terms and conditions specified in the Purchase Order;

'Supplier' means the party, individual or corporation to whom the Purchase Order is addressed;

'Tax Invoice' has the meaning given in the *New Tax System (Goods and Services Tax) Act 1999*.

4 PACKING

4.1 The Supplier must ensure the Goods are packed to ensure their safe delivery and in accordance with any specific packing, marking or labelling required by Council.

5 DELIVERY

5.1 Goods or Services must be delivered at the time, place and in the manner specified in the Purchase Order or by Council.

6 INCLUSIVE PRICE

6.1 The price specified in the Purchase Order includes:

- (a) Goods or Services Tax (GST);
- (b) all other taxes, duties and other imposts for which the Supplier is liable;

(c) all amounts payable for the use (whether in the course of manufacture or usage of the Goods or performance of the Services) of patents, copyrights, registered designs, trade marks and other Intellectual Property Rights; and

(d) all charges for supply of Goods or performance of Services.

7 PROVISION OF GOODS OR SERVICES

7.1 **Free from defect.** The Supplier must ensure the Goods supplied are free from defects in materials and workmanship and are at least of merchantable quality and fit for their purpose.

7.2 **Standard of Services.** The Supplier must perform the Services at a high standard with all due skill, care and diligence and ensure all Services are free from defects in performance, meet their purpose and are complete.

7.3 **Rejection of Goods or Services.** Council may at any time prior to acceptance reject any Goods or Services found not to be in accordance with the Contract.

7.4 **Latent defects.** After receiving the Goods or Services, Council may reject the Goods or Services for any non-conformity with the Contract which could not have been discovered by reasonable inspection before receipt.

7.5 **No payment for rejected Goods or Services.** Council will not be liable to pay for any rejected Goods or Services or for any damage done to or arising from inspection or rejection of the Goods or Services.

7.6 **Replacement, refund or repair.** If Council rejects any Goods or Services, the Supplier must, at Council's option, without prejudice to Council's rights otherwise arising under the Contract or the general law:

- (a) replace, without further cost to Council, the rejected Goods or Services with Goods or Services that comply with the Contract;
- (b) refund all payments related to the rejected Goods or Services; or
- (c) repair the Goods on site or otherwise to the satisfaction of Council,

and, in the case of (a) or (b), remove the rejected Goods at the Supplier's expense.

7.7 **Approval of samples.** If Council requires the Supplier to submit samples of the Goods or Services, the Supplier must not proceed to bulk manufacture the Goods or fully develop the Services until Council has approved the samples.

7.8 **Inspection.** Without additional cost to Council, and upon being sent reasonable notice from Council in writing, the Supplier must provide reasonable access to premises, including the premises of approved sub-contractors, and all other necessary assistance for Council's representatives to inspect the manufacture of the Goods or the performance of the Services.

7.9 **Receipt of Goods and/or Services** Notwithstanding clause 12 of this Contract, receipt of the Goods or Services by Council will not under any circumstances be deemed to be acceptance of those Goods or Services by Council.

8 ACCEPTANCE

8.1 The performance of this Contract is deemed to be acceptance of the Terms and Conditions.

9 VARIATIONS

9.1 No agreement or understanding varying the Terms and Conditions is legally binding upon the Supplier or Council unless in writing and signed by the Supplier and Council.

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9.2 No agreement or understanding varying or extending the Purchase Order is legally binding until Council issues an amended Purchase Order confirming the variation.

10 PAYMENT

10.1 Council will pay the Supplier 30 days from date of a valid Tax Invoice except:

- (a) To the extent that the valid tax Invoice is in dispute, or;
- (b) Where Council has an arrangement with the Supplier to make payment within other agreed terms.

10.2 A valid Tax Invoice means an invoice that:

- (a) is addressed in accordance with the Purchase Order;
- (c) identifies the Purchase Order number;
- (d) is, where explanation is necessary, accompanied by documentation substantiating the amount claimed; and
- (e) is, if GST is applicable, a valid Tax Invoice in accordance with GST legislation; and

where Council is satisfied with the Goods or Services.

10.3 Notwithstanding any other conflicting provisions, Council is not obliged to pay for any taxable supply made by the Supplier unless and until Council receives a valid Tax Invoice or adjustment notice for that supply.

10.4 The Supplier acknowledges that Council's method of payment is by electronic funds transfer directly to the Supplier's bank account unless an arrangement to pay by cheque is agreed in writing by Council and the Supplier.

10.5 The Supplier must provide Council with the Supplier's bank account for payment with respect to the Purchase Order.

10.6 The Supplier must notify Council of a change of the Supplier's bank account no later than 14 days before a payment by Council is due (the **Cut-off-Date**). Council is not liable to make any additional or interim payments to the Supplier if details of the Supplier's bank account are incorrectly notified by the Supplier or notified after the Cut-off-Date.

10.7 Council must provide a remittance advice to the Supplier when Council instructs its bank to make an electronic funds transfer or when Council makes a cheque payable to the Supplier.

10.8 This Section does not apply for purchases made using Council's Purchasing Cards. A valid Tax Invoice must be provided by the supplier for these types of purchases.

11 INDEMNITY

11.1 The Supplier indemnifies Council against all loss, damage, expense or legal costs arising in respect of any action or claim for alleged infringement of any Intellectual Property Rights or any misuse or unauthorised disclosure of personal information whether arising under the *Privacy Act 1988* (Cth) or otherwise, by reason of the purchase, possession or use of the Goods or Services.

12 PASSING OF TITLE

12.1 Subject to clauses 7.3, 7.4 and 7.5, title and risk of loss or damage to the Goods or Services pass to Council upon delivery to Council.

13 WARRANTIES

13.1 The Supplier warrants that:

- (a) all Goods will:
 - (i) meet the functional and performance criteria set out in and otherwise confirm with the Specifications;
 - (ii) be free from defects in design, materials, workmanship and installation;
 - (iii) be of good and merchantable quality and fit for use; and
 - (iv) when supplied to Council, be new and not used by any person (unless agreed in writing by Council);

(b) Documentation will be in English, complete and accurate, and suitable and sufficient for use by Council and its personnel to operate, to make full use of and to maintain the Goods or Services as the case

(c) All Services will be supplied in a good, workmanlike and timely manner and be carried out by competent and trained personnel and, without limitation, in accordance with the Requirements;

(d) In providing the Services, it will not be in breach of any obligation owed to any person and that it holds all licences and approvals necessary for or incidental to providing the Services.

13.2 If at any time during the Warranty Period for Goods the Supplier becomes aware or the Purchaser notifies the Supplier of any failure of those Goods to comply with any of the warranties given under clause 13.1, the Supplier, at its cost, will promptly correct that failure. This clause applies notwithstanding anything to the contrary in any documentation accompanying, or provided by the Supplier in connection with, the Goods or Services.

14 ASSIGNMENT AND SUB-CONTRACTING

14.1 The Supplier must not, without prior consent in writing from Council:

- (a) assign the Supplier's rights under the Contract; or
- (b) sub-contract the whole or any part of the manufacture or supply of the Goods or performance of the Services.

14.2 The Supplier must on request provide Council with the names of any of the Supplier's sub-contractors. The Supplier agrees, and must ensure that any sub-contractor agrees, that Council may disclose the sub-contractor's name publicly.

14.3 The Supplier is liable to Council for the acts and omissions of any sub-contractors as if those were the acts or omissions of the Supplier.

14.4 The Supplier acknowledges that neither the Supplier as Contractor nor any sub-contractors are Council's employee or agent. The Supplier also acknowledges that this Contract does not create a relationship of employment, agency or partnership between the Supplier and Council.

14.5 Supplier is liable to Council for the acts and omissions of any sub-contractors as if those were the acts or omissions of the Supplier.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 This Contract does not assign the Intellectual Property Rights of either party existing at the date of the Purchase Order.

15.2 Intellectual Property Rights in Material brought into existence as part of, or for the purposes of, performing the Services vests in Council. The Supplier grants, or must obtain for, Council a perpetual, world wide, royalty free licence (including a right to sublicense) to use, reproduce, adapt, modify and communicate any other material provided to Council under the Contract.

16 MORAL RIGHTS

16.1 To the extent permitted by laws and for the benefit of Council, the Supplier consents, and must use its best endeavours to ensure that each author of Material consents in writing, to the use by Council of Material even if the use may otherwise be an infringement of their Moral Rights.

17 CONFIDENTIAL INFORMATION

17.1 Council may at any time require the Supplier to give, and require the Supplier to arrange for its employees, agents or sub-contractors to give, a written undertaking in a form acceptable to Council relating to the use and non-disclosure of Council's confidential information.

18 PROTECTION OF PERSONAL INFORMATION

18.1 In relation to personal information obtained during the course of providing the Goods or Services under the Contract, the Supplier must:

- (a) use or disclose the personal information only for the purposes of the Contract;

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- (b) not do any act or engage in any practice that would breach an Information Privacy Principle under the *Information Privacy Act 2009*.
 - (c) immediately notify Council if the Supplier becomes aware of a breach or possible breach of any of its obligations under this clause 18.
- 18.2 The Supplier must ensure that any sub-contract entered into by the Supplier for the purpose of fulfilling its obligations under the Contract imposes on the sub-contractor the same obligations that the Supplier has under this clause 18 (including this requirement in relation to sub-contracts).

19 PRIVACY COLLECTION NOTICE

- 19.1 As a result of supplying goods or services to Council, the Supplier may be providing personal information which will be used for the purpose of delivering services and carrying out Council business.
- 19.2 Any personal information provided is handled in accordance with the Information Privacy Act 2009 and will be accessed by persons who have been authorised to do so. Information will not be given to any other person or agency unless the Supplier has given Council permission or the disclosure is required by law.

20 TERMINATION FOR CONVENIENCE

- 20.1 Without prejudice to any other rights and remedies it has under the Contract or otherwise, Council may, at any time, by written notice to the Supplier, terminate the Contract.
- 20.2 If the Contract is terminated under clause 20.1, Council is liable only for:
- (a) payments under clause 10 for accepted Goods or Services provided in accordance with the Contract before the effective date of termination; and
 - (b) reasonable costs actually incurred by the Supplier and directly attributable to the termination.
- 20.3 Council is not liable to pay compensation under clause 20.2 for an amount which would, in addition to any amounts paid or due, or becoming due, to the Supplier under the Contract, exceed the total amount payable for the Goods or Services under the Contract.
- 20.4 The Supplier is not entitled to compensation for loss of prospective profits.

21 TERMINATION FOR DEFAULT

- 21.1 If the Supplier:
- (a) fails to deliver the Goods or perform the Services by the date specified in the Contract;
 - (b) breaches a provision of the Contract where that breach is not capable of remedy;
 - (c) breaches any provision of the Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so;
 - (d) being an individual, makes any arrangement, assignment, composition or agreement for the benefit of his or her creditors under the *Bankruptcy Act 1966* (Cth) as amended, or a creditor's petition is filed with an Australian Court seeking a sequestration order against his or her estate; or
 - (e) being a corporation, comes under one of the forms of external administration referred to in Chapter 5 of the *Corporations Act 2001* (Cth), or an order has been made for the purpose of placing the corporation under external administration, or an application is filed with an Australian Court seeking the appointment of a liquidator, receiver or other external administrator,

Council may, without prejudice to any other rights and remedies it has under the Contract or otherwise, terminate the Contract in whole or in part by notice in writing to the Supplier.

- 21.2 On termination Council may:
- (a) cease all payments under the Contract;
 - (b) recover from the Supplier all sums paid for unperformed Services, undelivered Goods, defective Goods or Goods or Services which are not in accordance with the Contract; and
 - (c) purchase similar Goods or Services from alternative suppliers and claim by way of indemnity from the Supplier any loss Council may occur in doing so.

22 SECURITY

The Supplier must ensure that any material and property (including security-related devices and clearances) provided by Council for the purposes of the Contract is protected at all times from unauthorised access, use by a third party, misuse, damage and destruction.

23 USE OF COUNCIL PREMISES AND FACILITIES

The Supplier must, when using Council's premises or facilities, comply with all reasonable directions of Council relating to occupational health, safety and security in effect at those premises or in regard to those facilities, as notified by Council or as might reasonably be inferred from the circumstances.

24 COMPLIANCE WITH LAWS

- 24.1 The Supplier must ensure, in carrying out the Contract that it and any sub-contractor approved under this Contract comply with all relevant laws.

25 GOVERNING LAW AND JURISDICTION

- 25.1 This Contract is governed by the law of Queensland and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Queensland.

26 INSURANCE

- 26.1 The Supplier must have and maintain insurance cover sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the supply of the Goods or Services, including, as applicable, product liability insurance, public liability and professional indemnity insurance.
- 26.2 The Supplier must provide evidence of such insurance upon request by Council.

27 INTERPRETATION

- 27.1 In these Terms and conditions, unless the contrary intention appears:
- (a) A reference to this document or another instrument includes any variation or replacement of either of them;
 - (b) the singular includes the plural and vice versa;
 - (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
 - (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and assigns;
 - (e) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (f) a reference to a clause is a reference to a clause in this document; and
 - (g) a reference to a third person or a third party is a reference to a person who is not a party to these terms and Conditions.
 - (h) Headings are inserted for convenience and do not affect interpretation of these Terms and Conditions.

28 CONTRACTOR MANAGEMENT SYSTEM (CMS)

The Council has a legal obligation to ensure safe systems of work are in place and implemented by contractor/suppliers, including consultants and their workers who perform works on behalf of the Council. Prior to the commencement of any works, suppliers will be required to register and successfully meet the requirements of Council's Contractor Management System if they have not done so for recent and similar works.

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The Contractor Management System will require the supplier to upload and manage the on-going currency of required insurances (Public Liability, Work Cover QLD, Professional Indemnity - where requested), company licenses (if applicable), and Safe Work Method Statements / risk assessments developed for the engaged scope of work for Council.

All supplier employees working on a Council managed and controlled site / workplace, including any sub-contractors must have completed the online Council WHS General Induction via the Contractor Management System prior to arrival on site. In addition, the supplier will be required to ensure any applicable licences, training / competencies for each individual supplier employee (inc. sub-contractors) is uploaded into the Contractor Management System for Council review and verification.

No Supplier employee is permitted to commence work on a Council managed and controlled site / workplace until the above requirements have been met and verified by Council. Note: The Council WHS General Induction must be renewed every two years.

Council's Responsible Officer may provide an exemption should that be applicable. Suppliers cannot request an exemption.

This is the end of the Standard Terms and Conditions.