

# Purchase Order Terms and Conditions

## 1. Agreement Formation

- 1.1 A Purchase Order issued by Council will constitute an offer. The Supplier may accept the offer contained in the Purchase Order by notifying Council in writing or carrying out the Supply described in the Purchase Order.
- 1.2 If the Supplier is unable or unwilling to accept the offer contained in the Purchase Order, including these Terms and Conditions, it must notify Council promptly.

## 2. Validity of Purchase Order

- 2.1 Only Purchase Orders, signed or authorised electronically on official Council purchase order forms will be recognised by the Council and constitute an offer pursuant to Clause 1 of these Terms and Conditions.

## 3. Terms and Conditions of Purchase Order

- 3.1 Clauses 3 to 35 will apply to the Purchase Order unless:
  - (a) the Supplier and Council have entered a written contract, signed by Council and the Supplier, for the provision of the Supply; or
  - (b) the Supplier is carrying out the Supply pursuant to the terms and conditions of an LGA Arrangement.

## 4. Timeframes

- 4.1 The Supplier must commence the Supply on the Commencement Date and must achieve Completion of the relevant part of the Supply by the applicable Completion Date.

## 5. GST

- 5.1 Where used in this Clause 5, expressions defined in the GST Law bear the meanings the GST Law ascribes to them.

### *Character of Payments*

- 5.2 Unless the Purchase Order states otherwise, and for clarity, consideration for a taxable supply made under it is GST inclusive.

### *Input Credit Adjustments (Reimbursements)*

- 5.3 If the Purchase Order requires a recipient to reimburse a supplier the cost of a creditable acquisition, the cost is to be net of the input tax credit to which the supplier is entitled for the cost.
- 5.4 If the Purchase Order requires the reimbursement of a percentage of the cost of a creditable acquisition, the percentage is to be net of an equivalent percentage of the Input Credit to which the supplier is entitled for the cost.
- 5.5 If the reimbursement of all or part of the cost of a creditable acquisition constitutes consideration for a taxable supply, the recipient must pay the supplier, in conjunction with the reimbursement payment, the GST referable to the supply.

- 5.6 If the Purchase Order obliges a party to indemnify the other party against a cost the other incurs or sustains, the cost will be net of all input tax credits the payee is entitled to claim concerning that cost.

- 5.7 For clarity, if the net cost to be indemnified constitutes the consideration for a taxable supply, the payer must bear the GST for the taxable supply.

### *Tax Invoices*

- 5.8 The Supplier must:

- (a) give the recipient a tax invoice for the taxable supply at the time it seeks payment for the Supply;
- (b) give the recipient an adjustment note in return for or conjunction with a supplementary payment or a refund (respectively) made to adjust the consideration or the GST.

- 5.9 A party that has been issuing recipient created tax invoices for taxable supplies under the Purchase Order must notify the other party promptly if it loses its entitlement to issue such invoices.

### *Registration*

- 5.10 Each party declares that it is registered.

- 5.11 A party must notify the other promptly if it ceases to be registered.

## 6. Amendments

- 6.1 Prior to Completion of the Purchase Order, Council may, by delivery of a Notice to the Supplier, make changes in the specifications, designs or drawings, samples or other description to which the Supply is to conform by providing the Supplier with a Notice identify the required amendments.
- 6.2 If any such amendments cause an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Purchase Order, the parties may agree on an equitable adjustment in the Price or Completion Date, or both, and this Purchase Order will be modified in writing accordingly.
- 6.3 Any claim by the Supplier for an equitable adjustment must be made by Notice to Council within thirty (30) days of the receipt of Notice of the amendments from Council.
- 6.4 Where the parties cannot agree on an equitable adjustment to the Price or Completion Date, or both, the Supplier may in its absolute discretion accept or decline the amendment.

## 7. Packaging and Packing of Items

- 7.1 The Supplier will properly package and pack the Items to permit safe and secure transportation to reach their destination undamaged. The Supplier will also adhere to packaging requirements as specified by Council. A delivery note referencing the Purchase Order and **clearly** identifying the packages' content will accompany each delivery.

## 8. Risk and Title of Items

- 8.1 The Supplier warrants that it holds title to the Items.
- 8.2 Title in the Items will pass to Council upon payment for the Items either in full or in part by Council.
- 8.3 Title to samples provided to Council by the Supplier, pass to Council on delivery, unless otherwise agreed in writing.
- 8.4 Risk in the Items will remain with the Supplier until they are:
  - (a) delivered and accepted by Council; or
  - (b) installed and accepted by Council,
 as the case may require.
- 8.5 Risk in the Items will remain with the Supplier regardless of full or partial payment for the Items prior to their acceptance by Council.

## 9. Delivery and Provision of Items

- 9.1 The Supplier will deliver the Items on the applicable Completion Date and to the location specified in the Purchase Order.
- 9.2 Items may be delivered in instalments only if specified in the Purchase Order.
- 9.3 If no delivery date is specified, the Items must be delivered promptly. Any concession granted by Council with respect to delay in delivery, dispatch or completion of delivery of the Items will not be construed as a waiver of Council's rights and remedies under these Terms and Conditions unless specifically agreed in writing by Council.
- 9.4 Council will be entitled to cancel this Purchase Order should the Supplier fail to deliver all of the Items required by the Completion Date and to claim damages for breach of contract.
- 9.5 In the event the Items are delivered incorrectly or to the incorrect location, the Supplier will at its own expense collect and re-deliver the correct Items to the correct location and the Supplier will be liable for any actual and reasonable costs and damages Council incurs caused by the incorrect delivery. Receipt of Items will not be deemed as acceptance by Council of the same.

## 10. Acceptance of Items

- 10.1 All Items will be subject to inspection and test by Council. Council must inspect and test the Items as soon as reasonably practicable after those Items have been delivered in accordance with Clause 9.
- 10.2 If any of the Items ordered are found to be damaged, defective or not in conformity with the specifications of the Purchase Order, without limiting any other remedies to which it may be entitled, Council may at its option, by providing Notice to the Supplier:
  - (a) reject and return such Items at the Supplier's expense;
  - (b) require the Supplier to replace the damaged, defective or non-conforming Items with Items that conform to this Purchase Order; or
  - (c) require the Supplier at the Supplier's expense to deliver any shortfall in the quantity of Items

required to be delivered under the Purchase Order.

- 10.3 Council will not be obliged to pay for any Items rejected by Council.
- 10.4 The Supplier must comply with a Notice given under this Clause 10 within 5 Business Days after receipt of the Notice.

## 11. Provision of Services

- 11.1 The Supplier will Complete the Services on the applicable Completion Date and in the location specified in the Purchase Order.
- 11.2 Where no time is specified in the Purchase Order for delivery of the Services, the Supplier must deliver the Services promptly.
- 11.3 Where no location is specified in the Purchase Order for delivery of the Services, the Supplier is to deliver the Services from the Supplier's premises.
- 11.4 The Supplier will supply the Services with the high degree of professional skill, care, competence and diligence expected of a Supplier suitably qualified in provision of services of the same type as the Services.
- 11.5 Unless otherwise agreed in the Purchase Order, the Supplier is responsible for providing all equipment, personnel, and other resources required by the Supplier to perform the Services.
- 11.6 The Supplier will be solely responsible for the payment to the Supplier's Personnel of all amounts due by way of salary, superannuation, annual leave, long service leave and any other benefit to which they are entitled as the Supplier's Personnel;
- 11.7 Council may by Notice direct the Supplier to remove from Council's premises or from any activity in respect of the Services, any of the Supplier's Personnel who in Council's opinion are incompetent, negligent or guilty of misconduct or breaching work health and safety requirements.
- 11.8 Any concession granted by Council with respect to delay in delivery of the Services will not be construed as a waiver of Council's rights and remedies under these Terms and Conditions unless specifically agreed in writing by Council.
- 11.9 Council will be entitled to cancel this Purchase Order should the Supplier fail to deliver the Services required by the Completion Date and to claim damages for breach of contract.

## 12. Price

- 12.1 In consideration for the proper performance of the Supply by the Supplier, Council will pay the Supplier the Price.
- 12.2 The Price specified in the Purchase Order will remain firm and fixed unless a variation to the Price is agreed in writing by the parties.
- 12.3 The Price includes any and all charges including but not limited to GST, taxes, duties, inspection charges, insurance, packaging and delivery costs unless such charges are separately listed.

### 13. Invoices

- 13.1 The Supplier will submit invoices only upon Completion. Invoices will contain the following information as applicable: Purchase Order number, line-item number, part number and/or description of Items or Services, quantity, unit of issue, unit price, and extended totals.
- 13.2 Any applicable taxes will be shown separately on the invoice. In addition, unless otherwise specified in the Purchase Order or any written agreement, Council will not be obligated to pay the Supplier for any Supply if the Supplier presents the invoice for such Supply to Council more than one-hundred eighty (180) days after the date the Supply is made.
- 13.3 Invoices will be sent to the invoice address indicated on the Purchase Order. Upon Council's request, the Supplier will invoice Council electronically. Council will reject any invoice that does not include a valid Purchase Order number.

### 14. Payment

- 14.1 The time for payment and the applicability of any discount period will be computed from the date of receipt of each invoice by Council.
- 14.2 Council will pay each invoice within:
- (a) thirty (30) days after the month end of the invoice date; or
  - (b) the date when such invoice is due,
- whichever is the later, on receipt of a valid and correctly submitted invoice.
- 14.3 Payment will be deemed to have been made on the date Council sends payment.
- 14.4 Payment will not constitute acceptance of any Items or Services and will not waive or otherwise affect Council's right to inspect the Items or to reject such non-conforming Items or Services.
- 14.5 Adjustments will be made by Council for rejected Items or Services or for any over-payment due or, at Council's option, any such over-payment will be promptly refunded by the Supplier upon request.

### 15. Intellectual Property

- 15.1 The Supplier grants Council an irrevocable, worldwide, royalty free, fully assignable and non-exclusive licence, including a right to sublicense, to use the Intellectual Property Rights in any products, plans, designs, drawings, engineering information, data, software (including modifications and documentation), specifications, work methods, reports, accounts and any other material provided by the Supplier in connection with the Purchase Order for any purpose associated with the Supply.

### 16. Warranty

- 16.1 The Supplier represents that there exists no actual or potential conflict of interest concerning its obligations under this Purchase Order. The Supplier will not bring to Council or use in the performance of the Supplier's duties under this Purchase Order any materials or documents of another party considered confidential or proprietary unless the Supplier has obtained written authorisation from such party.

#### *Services Warranty*

- 16.2 In addition, the Supplier represents and warrants that the Services will be performed in a proper, workmanlike and professional manner with the degree of skill and care that is required by current, good and sound professional procedures. Further, the Supplier represents and warrants that the Services will be performed and completed in accordance with the applicable specifications referenced in the Purchase Order and will be correct and appropriate for the purposes contemplated in this Purchase Order.

#### *Item Warranty*

- 16.3 In addition, the Supplier represents and warrants that the Item(s):
- (a) are merchantable and conform to applicable specifications, drawings, samples or other descriptions referenced in the Purchase Order;
  - (b) will be free from defects in design, materials and workmanship;
  - (c) are free from all liens, claims, or encumbrances; do not infringe any patent, trademark, copyright or any other intellectual property right;
  - (d) are suitable for the purposes for which they are intended;
  - (e) unless otherwise stated in this Purchase Order, will be new and will not be used, reconditioned, or refurbished; and
  - (f) if they contain electromagnetic equipment, such electromagnetic equipment will comply fully with all necessary Equipment Rules.

#### *Warranty Period*

- 16.4 Unless otherwise agreed in writing, the Supply will be warranted as specified for a minimum period of twelve (12) months from acceptance by Council.
- 16.5 Re-performed Services and repaired or replaced Items will be warranted an additional 12 months, from the replacement date.
- 16.6 In the event Council identifies a warranty problem with the Supply during the warranty period, Council will promptly notify the Supplier and the Supplier will within five (5) days of such notification, at Council's option either:
- (a) re-perform the Services to Council's satisfaction;
  - (b) repair or replace the non-conforming or unsuitable Items, or
  - (c) refund Council the purchase price paid for such Item.
- 16.7 All expenses associated with the return to the Supplier of such Items and the delivery to Council of repaired or replacement Items will be borne by the Supplier.
- 16.8 The above warranties will survive any delivery, acceptance, payment, termination or expiration of

this Purchase Order and will run to Council, its successors, assigns, customers and users of its products.

16.9 These representations and warranties will be in addition to and do not otherwise affect any other conditions or warranties, whether expressed or implied by statute or otherwise (including rights in relation to consumer guarantees under the Australian Consumer Law).

## 17. Indemnity

17.1 The Supplier will indemnify Council, its officers, and customers from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including court costs and reasonable legal fees) incurred by Council in connection with:

- (a) any claim that the Items or the Services infringe or misappropriate a copyright, patent, trademark, trade secret, or any other intellectual property or proprietary right of any third party;
- (b) The Supplier's breach of warranty, negligence, wilful misconduct, fraud, misrepresentation, or violation of law associated with the Supply;
- (c) any property damage, personal injury or death caused by the Supplier or its Personnel; or
- (d) a breach of any Legislative Requirement by the Supplier or its Personnel.

17.2 This indemnity does not apply to any monetary penalty imposed under an Act which prohibits the indemnifying of a person for a liability for all or part of a monetary penalty under the Act.

## 18. Sub-contracting & Assignment

18.1 The Supplier may not subcontract its obligations under this Purchase Order without the prior written consent of Council. Where consent is given, the Supplier will be liable for the acts and omissions of any sub-contractor as if those were the acts or omissions of the Supplier.

18.2 The Supplier may not assign the Purchase Order without the prior written consent of Council.

## 19. Insurance

19.1 The Supplier will insure all Items against loss or damage while in the Supplier's custody or control to the full extent of their replacement value when:

- (a) Council has sent the Items to the Supplier for any purpose connected with this Purchase Order; or
- (b) risk in the Items remains with the Supplier pursuant to Clause 8.4.

19.2 The Supplier shall maintain and, where relevant, cause the Supplier's subcontractors to maintain:

- (a) Public Liability Insurance and Products Liability Insurance of not less than \$30,000,000 for any one occurrence or at a level acceptable to Council; and
- (b) Worker's Compensation Insurance that covers every person engaged by it in provision of the Supply; and

(c) Professional Indemnity Insurance of not less than \$10,000,000 for any one occurrence or at a level acceptable to Council if the Supplier is providing any professional advice or professional service as part of the Supply; and

(d) comprehensive insurance of not less than \$30,000,000 for any one occurrence in respect of any Vehicle used in connection with the Supply, and any required statutory insurance including compulsory third party liability insurance where required.

19.3 The insurances required under Clause 19 must be:

- (a) effected and maintained with a Registered Insurer;
- (b) must remain current from the Commencement Date until the Completion Date;
- (c) must insure severally the Supplier and the Personnel it engages in the provision of the Supply;
- (d) must cover items of the Supplier's plant and equipment used in provision of the Supply if not covered by comprehensive or third-party liability insurance;
- (e) must be occurrence based; that is to say: it must provide indemnity upon claims made after the policy has expired if the events precipitating the claims occur while the policy is current; and
- (f) otherwise on terms and conditions that a prudent and competent contractor would insure with and obtain taking into account the Supply and the Supplier's obligations under the Purchase Order.

19.4 The Supplier must:

- (a) provide a certificate of currency for each insurance policy required under Clause 19 at any time upon request by Council;
- (b) not do or omit to do anything which may invalidate or adversely affect the insurance that the Supplier is obliged to maintain under Clause 19; and
- (c) notify Council immediately in the event that anything occurs which has invalidated or adversely affected, or is likely to invalidate or adversely affect, that insurance.

## 20. Work Health and Safety

20.1 Without limiting any other clause, the Supplier must:

- (a) carry out the Supply in a safe manner;
- (b) comply with, and do all things necessary to enable Council to comply with, all laws relating to work health and safety ("WHS");
- (c) have documented safe work practices and procedures for the Supply;
- (d) provide its Personnel with personal protective equipment, inductions, information, instruction,



training and supervision to ensure their health and safety; and

- (e) provide, when requested by Council, evidence of its compliance with any laws relating to WHS.

20.2 As soon as practicable, the Supplier must report to Council:

- (a) any breach of the WHS Legislation; or
- (b) any notifiable incident under the WHS Legislation, that occurs in relation to the Supply.

20.3 The Supplier is responsible for notifying the regulator about any notifiable incidents in accordance with the WHS Legislation. The Supplier must reasonably consult, cooperate and coordinate activities with the Council in relation to any matters under the WHS Legislation, including where there are mutual obligations.

## 21. Limitation of Liability

21.1 In no event will Council be liable to the Supplier or any third party for any incidental, indirect, special, punitive or consequential loss or damages, or damages for any loss of profits, loss of revenue, loss of business or goodwill, data or data use arising out of or in connection with this Purchase Order, whether in an action in contract or tort (including negligence) or otherwise, whether or not Council has been advised of the possibility of such losses and/or damages.

## 22. Privacy

22.1 Where in relation to the Supply, the Supplier will have access to or in any way deal with Personal Information for Council, the Supplier must:

- (a) comply, and ensure that its Personnel comply, with Chapter 2, Parts 1 and 2 and section 41 of the *Information Privacy Act 2009* (Qld), as if they were an agency under that Act, in relation to the discharge of the Supplier's obligations under the Purchase Order;
- (b) refrain, and ensure that its Personnel refrain, from anything that, if done by Council, would breach Chapter 2, Parts 1 and 2 and section 41 of the *Information Privacy Act 2009* (Qld);
- (c) ensure Personal Information is protected against loss, and unauthorised access, use, modification or disclosure and against other misuse;
- (d) not use Personal Information other than for the purpose of the Supply, unless required or authorised by law;
- (e) not transfer Personal Information outside Australia without the written agreement of Council;
- (f) ensure that only authorised Personnel for whom knowledge of the Personal Information is essential to effective performance of their duties related to the Supply have access to Personal Information;
- (g) immediately notify Council if it becomes aware of a breach, or the possible breach, of Clause 22;

- (h) fully co-operate with Council to enable Council to respond to applications for access to, or amendment of a document containing an individual's Personal Information and to privacy complaints; and
- (i) comply with such other privacy and information security measures as Council may reasonably require in writing from time to time.

## 23. Compliance with Legislative Requirements

23.1 The Supplier must comply (by itself and by its Personnel), at the Supplier's own cost and expense, with all Legislative Requirements to the extent applicable to the Supplier, the Supply or the Supplier's performance of the Purchase Order.

23.2 When requested by Council, the Supplier must provide Council with access to its Personnel and records to enable Council (which includes its Personnel) to conduct audits of the Supplier's compliance with Clause 23. If any non-compliance is identified, the Supplier must immediately rectify it at its cost.

## 24. Termination

### *Termination for breach or insolvency*

24.1 Either party, without limiting its rights at law, may immediately terminate by Notice this Purchase Order if the other party:

- (a) breaches a term of the Purchase Order and that breach cannot be remedied; or
- (b) breaches any term of the Purchase Order and fails to remedy that breach within 5 Business Days of being directed by Notice to do so by the party not in breach; or
- (c) becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller or anything analogous to these events.

24.2 Council will pay to the Supplier, in accordance with the Purchase Order, for the work completed up to the date of termination:

- (a) any part of the Services (if any) properly carried out and completed in accordance with the Purchase Order up to the Supplier's receipt of notice of termination;
- (b) any Items accepted by Council's representative up to the Supplier's receipt of notice of termination or pursuant to Clause 24.1.

### *Termination for convenience*

24.3 Council may at any time terminate this Purchase Order at its discretion for any reason by giving 5 Business Days Notice to the Supplier.

24.4 If Council exercises its right to terminate for convenience, Council will pay to the Supplier, in accordance with the Purchase Order, for the work completed up to the date of termination:

- (a) any part of the Services (if any) properly carried out and completed in accordance with the

Purchase Order up to the Supplier's receipt of notice of termination;

- (b) any Items accepted by Council's representative prior to the Supplier's receipt of notice of termination;
- (c) direct, necessary and reasonably incurred actual costs and expenses caused by the termination but only to the extent that those costs and expenses could not reasonably be mitigated by the Supplier.

#### *Rights and Obligations on Termination*

24.5 Upon termination, the Supplier will:

- (a) cease carrying out the Supply;
- (b) deliver to Council such work in progress or completed Items as the Council's representative may request; and
- (c) vacate (and ensure its Personnel vacate) any premises owned or controlled by Council and leave those premises in a clean and safe condition.

24.6 Upon termination, other than as provided under Clauses 24.2 or 24.4, the Supplier will have no other entitlement to payment or compensation as a consequence of the termination, including no entitlement to payment or compensation for loss of profit, revenue, goodwill or business opportunities, damage to reputation, or for any indirect or consequential loss or for any other reason in relation to the termination.

#### **25. Governing Law and Jurisdiction**

25.1 This Purchase Order is governed by and must be construed in accordance with the laws of Queensland.

25.2 Each party submits to the exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time under or in connection with this Purchase Order.

#### **26. Severance**

26.1 If any provision of this Purchase Order is prohibited by law or judged by a court to be unlawful, void or unenforceable:

- (a) the provision will, to the extent required, be severed from this Purchase Order and rendered ineffective as far as possible without modifying the remaining provisions of this Purchase Order; and
- (b) the severance will not affect any other provisions of or the validity or enforcement of the Purchase Order.

#### **27. Waiver**

27.1 No failure or delay by a party in exercising any right, power, or privilege under this Purchase Order will impair the same or operate as a waiver of the same. No single or partial exercise of any right, power or privilege precludes any further exercise of the same or the exercise of any other right, power or privilege.

#### **28. Notices**

28.1 A Notice under the Purchase Order is effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) given by and to that person's address, sent by mail to that person's address, or sent by email to that person's email address.

28.2 A notice delivered under clause 28 is given and received:

- (a) if it is hand delivered or sent by email by 5:00 pm (local time in the place of receipt) on a Business Day, on that day;
- (b) if it is hand delivered or sent by email after 5:00 pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day;
- (c) if it is sent by post, 5 Business Days after posting.

#### **29. Entire Agreement**

29.1 This Purchase Order contains the entire understanding and agreement of the parties concerning its subject matter.

#### **30. Confidentiality**

30.1 The Supplier agrees to treat all Confidential Information as confidential information of Council, both during and after the term of the transaction under this Purchase Order.

30.2 "**Confidential Information**" means all information and material to which the Supplier has access in connection with this Purchase Order including, but not limited to,

- (a) all software, documentation, financial, marketing and customer data and other business information; and
- (b) any other material or information that is either marked as confidential or is disclosed under circumstances that one would reasonably expect it to be confidential.

30.3 The Supplier must immediately notify the 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.

#### **31. Relationship of the Parties**

31.1 No agency or partnership relationship is created between the Supplier and Council as a result of the transaction which is the subject matter of this Purchase Order.

31.2 The parties agree that the Supplier is an independent contractor and, as such, the Supplier is not a partner, agent, employee or principal of Council.

31.3 The Supplier will not act for or in the place of Council in Council's relations with third parties.

## 32. Ethics

32.1 The Supplier will not pay any commission, fees or grant any rebates to any employee, officer or agent of Council nor favour employees, officers or agents of Council with any Gift or Benefit unless the Gift or Benefit is a memento and the total value of it is less than \$100.00, nor enter into any personal business arrangement with employees, officers or agents of Council other than as a representative of Council, without Council's prior written approval. Breach of this section will entitle Council to terminate all Purchase Orders between the Supplier and Council forthwith.

## 33. Set Off

33.1 Council will have the right at any time to set-off any amount owing from the Supplier to Council or affiliates against any amount payable by Council pursuant to the Purchase Order.

## 34. Publicity

34.1 The Supplier will not without the Council's prior written consent, engage in publicity related to this Purchase Order, or use the Council's name, logo, trade name, trademark, service mark, insignia, symbol, logo, or any other designation or intellectual property right of Council in any manner whatsoever.

## 35. Survival

35.1 The obligations under Clauses 15, 16, 17, 19 and 21 through to 35, and any other obligations by their nature intended to survive termination or expiry of this Purchase Order, survive termination or expiry of this Purchase Order.

## DEFINITIONS

In these Terms and Conditions:

**Act** means a legislative enactment of the Queensland parliament or the Commonwealth parliament (including any subordinate legislation made under the enactment).

**Australian Consumer Law** has the meaning given to that term in the *Competition & Consumer Act 2010* (Cth).

**Business Day** means a day other than a Saturday, Sunday or public holiday in Council's local government area.

**Claim** means the assertion of entitlement to a remedy (at law, in equity, or under an Act):

- (1) arising from, or otherwise relating to, an act or an occurrence;
- (2) made by any means, including:
  - (a) by a demand; or
  - (b) by the pursuit of a cause of action before a court, a tribunal, or another body (judicial, quasi-judicial, or administrative).

**Clause** means a numbered clause in these Terms and Conditions.

**Commencement Date** means the:

- date or dates specified in the Purchase Order as the Order Date; or

- the date agreed in writing by the parties.

**Completion** means the stage of the Supply when:

- all applicable Items, if any, have been delivered to the appropriate location and installed and commissioned, as applicable, in accordance with the Purchase Order and have been accepted by Council in accordance with Clause 10.
- all Services have been completed in accordance with the Purchase Order;
- any documents or other information relating to the Completion of the Supply or any other obligations of the Supplier which the Purchase Order requires or which Council requires to be provided to Council have been provided; and
- all applicable conditions required by the Purchase Order to be satisfied before Completion have been satisfied.

**Completion Date** means the date or dates specified in the Purchase Order, if any, by which:

- the Supply must achieve Completion; or
- a nominated part of the Supply must achieve Completion.

**Council** means the Somerset Regional Council its subsidiaries, authorised representatives, successors and permitted assigns.

**Equipment Rules** has the meaning given to that term under the *Radio Communications Act 1992* (Cth).

**Gift or Benefit** includes any:

- money or a loan of money;
- property of any kind;
- free services or services supplied at a reduced price;
- hospitality including meals, entertainment and accommodation;
- travel or other benefits.

**GST Law** means *The GST law as defined in A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Harm** means all or any of:

- death;
- disease;
- illness (including mental illness);
- personal injury;
- (for clarity) disablement, whether from disease, illness, or personal injury; and
- property damage and loss.

**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), trademarks, service marks, and designs (whether or

not now existing and whether or not registered or registerable) and includes any right to apply for the registration of such rights and all renewals and extensions.

**Items** mean the goods, licenses or equipment specified in the Purchase Order.

**Legislative Requirement** includes:

- Acts, ordinances, regulations, by-laws, awards and proclamations of the Commonwealth, a State or Territory, or a local government relevant to the matters the subject of the Purchase Order, the Supply or where any part thereof is being carried out;
- certificates, licences, consents, permits, codes, standards, approvals and requirements of organisations having jurisdiction in connection with the Purchase Order;
- Australian Standards, National Construction Code and any other relevant standards; and
- fees and charges payable in connection with the foregoing.

**LGA Arrangement** means an *LGA arrangement* under the *Local Government Regulation 2012* (Qld).

**Notice** means a notice given under Clause 28.

**Personnel** for either party means each of its officers, councillors (where relevant), employees, agents, subcontractors and consultants.

**Personal Information** has the meaning given to that term in the *Information Privacy Act 2009* (Qld).

**Price** means the price specified in the Purchase Order, or such other price as the parties agree in writing.

**Professional Indemnity Insurance** means an insurance policy that covers the insured against Claims concerning, and liability for:

- the erroneous or otherwise inadequate performance of work in the provision of professional services; or
- the breach of professional duty,

in connection with the Supply.

**Products Liability Insurance** means an insurance policy that covers the insured against Claims concerning, and liability for, defects in or the defective functioning of:

- goods manufactured, constructed, erected, installed, altered, repaired, serviced, or supplied by the insured; and
- goods of which the insured's possession has ceased or over which its control has ceased.

**Public Liability Insurance** means an insurance policy that covers the assured against Claims by third persons concerning, and liability to third persons for, Harm and loss borne of or connected (directly or indirectly) with the Supply, including failed or faulty performance.

**Purchase Order** means the instructions given in the document referred to as "the Purchase Order", for the supply of goods or services, all appendices and attachments referenced in the Purchase Order and these Terms and Conditions.

**Registered Insurer** means an entity conducting insurance business pursuant to a licence granted under the *Insurance Act 1973* (Cth).

**Services** means the services specified in the Purchase Order.

**Supplier** means the person, firm, enterprise, or corporation to whom the Purchase Order is addressed.

**Supply** means the supply of the Items, if any, and the Services, if any.

**Vehicle** an item of equipment, motorized or non-motorized, for transporting persons, goods, commodities, or other items.

*Examples are:*

- (a) cars (including delivery vehicles, service vehicles, and vehicles for transporting personnel);
- (b) motor cycles;
- (c) trucks (including water trucks used for suppressing road dust);
- (d) trailers;
- (e) earthmoving equipment; and
- (f) maintenance vehicles.

**WHS Legislation** means the *Work Health and Safety Act 2011* (Qld), the *Work Health and Safety Regulation 2011* (Qld), and any relevant codes of practice, guidelines and advisory standards made under that Act.

**Workers Compensation Insurance** means insurance under the *Workers Compensation and Rehabilitation Act 2003* (Qld).