



# Standard Terms and Conditions of Purchase for Goods and/or Services

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## 1. Definitions

In this agreement:

**Background Intellectual Property** means Intellectual Property rights in the deliverables (Goods and Services) which were not specifically created as part of providing the Goods and Services (including the pre-existing Intellectual Property rights of the Supplier and Intellectual Property rights of third parties).

**Business Day** means a day that is not a Saturday, Sunday or public holiday in South Australia.

**Confidential Information** means any documentation or information of a confidential nature supplied by either party to the other in connection with this agreement, but excludes information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by law.

**Force Majeure Event** means an event beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) a significant industrial dispute outside of the Supplier's control, each instance must be accepted by Council after the Supplier has notified under clause 12.2.1.

**Goods and Services** means the goods and/or materials and/or services specified in the Purchase Order.

**Intellectual Property** means all rights conferred by statute, common law or equity in relation to patents, inventions, registered and unregistered designs, registered and unregistered trademarks, trade names, logos and get up, confidential information, copyright and moral rights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Purchase Order** means the City of Salisbury Purchase Order referencing these Terms and Conditions.

**Supplier** means the person, company, partnership, organisation or corporation named on the Purchase Order.

**Supplier's Representative** means the owner or an employee of the Supplier who is authorised to resolve disputes and participate in negotiations on behalf of the Supplier.

**Terms and Conditions** means these Terms and Conditions.

**Warranty Period** means either the term of the manufacturer's warranty or two (2) years, which is greater.

Expressions used in the Purchase Order have the same meaning in these Terms and Conditions.

## 2. Interpretation

In this document, unless the context otherwise requires:

- 2.1 a reference to this **agreement** means the Purchase Order and the Terms and Conditions;
- 2.2 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 2.3 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 2.4 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 2.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it.
- 2.6 a provision is not construed against a party only because that party drafted it;
- 2.7 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 2.8 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

## 3. Application

This agreement:

- 3.1 applies to all Goods and Services supplied by the Supplier to the Council and the Supplier is deemed to have read and agreed to this agreement prior to filling any order for the Goods and Services; and
- 3.2 prevails over the Supplier's terms and conditions of sale or any other documents provided by the Supplier.

## 4. Supply

The Supplier agrees to supply the Goods and Services and the Council agrees to purchase the Goods and Services on the terms of this agreement.

## 5. Delivery of Goods

- 5.1 The Supplier must deliver the Goods on or before the delivery date as specified in the Purchase Order.
- 5.2 Unless otherwise specified in this agreement, "**delivery**" occurs as soon as the Goods are:
  - 5.2.1 off-loaded at the delivery address specified in the Purchase Order; and
  - 5.2.2 inspected by the Council and accepted as being in accordance with this agreement.
- 5.3 Title to and property in the Goods passes to the Council on delivery of the Goods.
- 5.4 Risk in the Goods passes on delivery of the Goods.
- 5.5 No liability to pay for any Goods arises until delivery.

## 6. Provision of Services

- 6.1 The Supplier must provide the Services in accordance with the Purchase Order and:

- 6.1.1 perform the Services with all the skill, care and diligence to be expected from a qualified, competent and experienced provider of services similar to the Services;
  - 6.1.2 devote such of its time and ability as is appropriate and reasonably necessary for the proper and timely performance of the Services;
  - 6.1.3 comply with all Authorisations and all applicable Laws, accepted industry standards, specifications and procedures in the performance of the Services and its obligations under this agreement; and
  - 6.1.4 comply with any reasonable requests of the Council, whether in relation to the manner of the performance of the Services or otherwise.
- 6.2 The Supplier must provide at its own expense all plant, equipment and facilities required for the performance of the Services and maintain them in a safe and good working condition.

## **7. Payment**

The Council must pay the price specified in the Purchase Order by cheque or electronic funds transfer within thirty (30) days of the end of the month in which the invoice is issued by the Supplier. The invoice cannot be issued until after delivery of the Goods and Services.

## **8. Warranties by Supplier**

- 8.1 The Supplier warrants that the Goods will:
- 8.1.1 be of good merchantable quality and fit for their purpose;
  - 8.1.2 be new, unless otherwise notified in writing by the Supplier;
  - 8.1.3 conform with the description and the specifications in the Purchase Order; and
  - 8.1.4 throughout the Warranty Period, operate in accordance with the specifications, and otherwise in accordance with the operation of similar products.
- 8.2 If any Goods are found to be defective or do not comply with clause 8.1.1 to 8.1.4 and the Council notifies the Supplier of the defect during the Warranty Period, the Supplier must, at its own cost, promptly replace the Goods and deliver it to the Council.
- 8.3 Failing rectification by the Supplier, the Council may rectify defects at the cost of the Supplier.

## **9. Supplier Indemnities**

The Supplier must indemnify the Council against all actions, proceedings, claims, demands, charges, penalties, expenses and all other liabilities arising from or in relation to the performance or non-performance of any of the Supplier's obligations under this agreement.

## **10. Insurance**

- 10.1 The Supplier must maintain at all times public and products liability insurance for at least \$20,000,000AUD.
- 10.2 Where Services are being provided, the Supplier is required to maintain professional indemnity insurance for at least \$2,000,000.00AUD.
- 10.3 The Supplier must provide certificates of currency in respect of the Supplier's insurance cover when reasonably requested by the Council.

## **11. Work Health and Safety**

In complying with its obligations pursuant to this agreement, the Supplier agrees to:

- 11.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Supplier;
- 11.2 comply with all requirements of the *Work Health and Safety Act 2012 (SA)* (or the equivalent legislation in the jurisdiction where the Goods and Services (or any part thereof) are to be performed) and any Regulations made under it;
- 11.3 comply with any reasonable requests of the Council in relation to the Supplier's performance of its obligations pursuant to this agreement; and
- 11.4 ensure that workers engaged by the Supplier undertake induction as required by Council.
- 11.5 As soon as is practicable, notify Council of any:
  - 11.5.1 safety or environmental incidents that occur during the performance of Goods and Services under this agreement.
  - 11.5.2 regulatory notices served on the Supplier in relation to the performance of Goods and Services under this agreement.
  - 11.5.3 Notifiable Incident (as defined by the *Work Health and Safety Act 2012 (SA)*) that occurs during or as a result of the performance of Goods and Services under this agreement.

In relation to any safety or environmental incident, on request, the Supplier must provide a report to the Council giving complete details, including the results of investigations into its cause and recommendations or strategies for prevention in the future.

## 12. Force Majeure

- 12.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:
  - 12.1.1 neither party is liable for such delay or failure; and
  - 12.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.
- 12.2 A party which is, by reason of a Force Majeure Event, unable to perform its obligations under this agreement must:
  - 12.2.1 notify the other party as soon as possible giving:
    - 12.2.1.1 reasonably full particulars of the Force Majeure Event;
    - 12.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
    - 12.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
  - 12.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
  - 12.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
  - 12.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
  - 12.2.5 notify the other party when resumption of performance occurs.

- 12.3 If a delay or failure under this clause exceeds sixty (60) days, the Council may immediately terminate this agreement by written notice to the Supplier. In such circumstances, the Council will be liable to the Supplier only in respect of the fees properly owing up to the date of termination in respect of the Goods and Services supplied to the Force Majeure Event. Without limiting the effect of this clause 12.3, the Council will not be liable to compensate the Supplier for loss of potential profits or other consequential loss incurred by the Supplier arising from termination by the Council pursuant to this clause.

### 13. Termination

- 13.1 The Council may immediately terminate this agreement by giving notice to the Supplier if the Supplier:
- 13.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement;
  - 13.1.2 breaches a material provision of this agreement and fails to remedy the breach within a specified reasonable time after receiving notice requiring it to do so;
  - 13.1.3 becomes an externally-administered body corporate or an insolvent under administration or becomes insolvent (each within the meaning of the *Corporations Act 2001*).
- 13.2 Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

### 14. Audit

The Supplier must keep the Council fully and regularly informed as to all matters relating to the Goods and Services and must provide to the Council any information reasonably requested by the Council for the purposes of monitoring the performance of the Supplier's obligations under this agreement.

### 15. Confidential Information and Freedom of Information

- 15.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:
- 15.1.1 keep confidential;
  - 15.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
  - 15.1.3 maintain proper and secure custody of; and
  - 15.1.4 not use or reproduce in any form,
- any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this agreement.
- 15.2 The *Freedom of Information Act 1991 (SA)* (**FOI Act**) gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts held by the Council but excluding Contracts which should be kept confidential for public interest purposes, contracts which are commercial in confidence or for the preservation of personal privacy.
- 15.3 The Supplier consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.

- 15.4 Unauthorised disclosure of the Confidential Sections and their subject matter contained therein constitutes a breach of a party's obligations under this agreement.

## 16. Intellectual Property

- 16.1 Other than any documents, equipment, software, information and data provided by the Council to the Supplier, the Supplier warrants that the Goods and Services will not infringe the Intellectual Property of any third party.
- 16.2 The ownership of Intellectual Property produced as a result of this agreement vests solely in the Council immediately on its creation. Ownership of Background Intellectual Property remains with its creator.
- 16.3 The Supplier is granted a royalty free non-transferrable non-exclusive licence to use any Intellectual Property:
- 16.3.1 produced as a result of this agreement; or
  - 16.3.2 relating to the documents, equipment, software, information, data or the Confidential Information provided by the Council to the Supplier;
- solely for the purpose of providing the Goods and Services and for no other purpose.
- 16.4 The Supplier hereby grants the Council a perpetual, royalty-free, non-exclusive licence of Background Intellectual Property, with a right to grant sub-licences, to the extent necessary to use or reproduce in any way the deliverables (Goods and Services).

## 17. Disputes

- 17.1 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.
- 17.2 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.
- 17.3 If the parties are unable to resolve the dispute within ten (10) Business Days, they must promptly refer the dispute:
- 17.3.1 in the case of the Council to the Chief Executive Officer; and
  - 17.3.2 in the case of the Supplier to the Supplier's Representative.
- 17.4 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.
- 17.5 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
- 17.6 All disputes or differences between the Council and the Supplier must be referred to an arbitrator, agreed by the parties or in the absence of agreement appointed by the Chairperson for the time being of the Resolution Institute.

## 18. Relationship

This agreement does not create a relationship of employment, agency or partnership between the parties.

## 19. Miscellaneous

### 19.1 Special conditions

If there is an inconsistency between a special condition set out in the Purchase Order and the rest of this agreement, the special condition governs to the extent of the inconsistency.

## **19.2 Assignment**

The Supplier must not assign this agreement or any right under it without the prior written consent of the Council.

## **19.3 Entire agreement**

This agreement:

- 19.3.1 constitutes the entire agreement between the parties about its subject matter;
- 19.3.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

## **19.4 Waiver**

A waiver of a provision or right under this agreement:

- 19.4.1 must be in writing signed by the party giving the waiver;
- 19.4.2 is effective only to the extent set out in the written waiver.

## **19.5 Exercise of power**

- 19.5.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.
- 19.5.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

## **19.6 Survival**

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

## **19.7 Governing law**

- 19.7.1 This agreement is governed by the law in South Australia.
- 19.7.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

## **19.8 Ombudsman**

The Supplier acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Supplier must ensure compliance with all obligations arising under that Act and all other applicable laws.

## **19.9 ICAC**

The Supplier acknowledges when entering into a contract with the Council they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act 2012 (SA)* (**ICAC Act**) and will be obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

## **20. GST**

- 20.1 The total amounts payable under this agreement are inclusive of GST, if applicable.
- 20.2 Notwithstanding any other provision of this agreement, the Council need not make any payment for a taxable supply made by the Supplier under this agreement until the Supplier has given the Council a tax invoice in respect of that taxable supply.

## **21. Notices**

- 21.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
  - 21.1.1 in writing, in English and signed by a person authorised by the sender; and

- 21.1.2 hand delivered or sent by pre-paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Purchase Order, as varied by any Notice given by the recipient to the sender.
- 21.2 A Notice is deemed to be received:
  - 21.2.1 if sent by prepaid post, two (2) Business Days after posting;
  - 21.2.2 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last notified by the recipient to the sender;
  - 21.2.3 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a law of the Commonwealth of Australia.