

# Central Highlands Regional Council

## Purchase Order Terms and Conditions

### 1 Definitions

- 1.1 "Council" means Central Highlands Regional Council
- 1.2 "Goods" means the articles, goods, material or parts thereof to be supplied under the Purchase Order.
- 1.3 "Intellectual property" includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields but does not include moral rights (being the rights of attribution and integrity of authorship and the right not to have authorship falsely attributed) or the rights of performers.
- 1.4 "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;.
- 1.5 "Services" means the professional, technical or unique services to be performed and deliverables to be provided by the Supplier as specified in the Purchase Order.
- 1.6 "Supplier" means the person, firm or corporation from whom the Goods are being purchased or the Services are being provided stated in the Purchase Order.
- 1.7 "Supplies" means goods and services.

### 2 General

- 2.1 These Terms and Conditions apply to any contract arising from a Purchase Order where there are no other written Terms and Conditions but where there are other written Terms and Conditions (including those specified on the Purchase Order) those other Terms and Conditions will prevail over these Terms and Conditions to the extent of any inconsistency.
- 2.2 Except as may be required by law or for the purpose of the provision of legal, taxation or accounting advice to the Supplier, the terms of the contract to which the Purchase Order applies shall be confidential to the Council and the Supplier provided that nothing in this obligation shall prevent disclosure of those aspects of such contract necessary to enable the Supplier to perform its obligations under the contract.
- 2.3 The Supplier shall familiarise itself with the requirements of Council's Ethical policy (where applicable), and where applicable, observe the standards of conduct set out therein.
- 2.4 The Supplier must not represent itself as being an employee or agent of Council or as otherwise able to bind or represent Council.

### 3 Contract

- 3.1 The Supplier is taken to have accepted a Purchase Order if it notifies Council that it accepts the Purchase Order or delivers the Goods and/or Services described in the Purchase Order.
- 3.2 If the Supplier is unable or unwilling to accept the Purchase Order, it must notify Council promptly. It may propose a variation to the Purchase Order, or offer other Goods and/or Services in substitution, but these must first be approved in writing by Council before delivery.
- 3.3 The Purchase Order once accepted, combined with these Terms and Conditions and any terms and conditions in the Purchase Order and/or any attachment expressly incorporated in writing, will form a binding agreement between the parties ("Contract").

### 4 Delivery Performance

- 4.1 The delivery of all goods and the performance of all services must be made at the time, place, and in the manner, stated in the Purchase Order.
- 4.2 Council may reasonably specify in writing to the Supplier another time, place or manner for delivery or performance, in which case that other time, place or manner applies in place of that stated in the Purchase Order.
- 4.3 Goods must be packed, marked and labelled to ensure their safe delivery and safe handling by Council after delivery and, if specific packing, marking or labelling is required under the Purchase Order, comply with those requirements.
- 4.4 Time is of the essence.

### 5 Quality and Compliance with Requirements

- 5.1 The Supplier must provide the goods and/or services at a high standard with all due skill, care and diligence.

5.2 All goods and services must be of best quality and/or comply with the specifications (written or verbal) issued by authorised Council officers, be fit for purpose, comply with any applicable statutory warranties and be in accordance with industry Standards.

## **6 Inspection and Acceptance**

### **Services**

6.1 Council may inspect the performance and outcome of the services at any time and for that purpose the Supplier must, at reasonable times, give Council's representatives access to the premises at which the services are being performed.

6.2 If there is a defect in the performance of the services or the services are not complete, Council may by notice require the Supplier to remedy the defect, or complete the services, at no additional cost to Council. If the services do not meet their purpose or are not in accordance with the Contract, Council may by notice require the Supplier to redo the services at no additional cost to Council. Where the Supplier fails to remedy a defect in the performance of the services, complete the services, or redo the services, within 14 days (unless otherwise agreed) after notification by Council under this clause, Council may perform or have performed the necessary work and recover the cost from the Supplier without prejudice to any other rights or remedies Council may have.

### **Goods**

6.3 Council may inspect the goods at any time prior to acceptance and reject any goods found not to be in accordance with the Contract. After acceptance Council may reject any goods for any non-conformity with the Contract which could not have been discovered by reasonable inspection before acceptance.

6.4 Council will not be liable to pay for any rejected goods or for any damage or costs arising from inspection or rejection of goods.

6.5 If Council rejects any goods, the Supplier must, without prejudice to Council's rights otherwise arising under the Contract or the general law, comply with a requirement of Council to:

- a) replace, without cost to Council, the rejected goods with goods complying in all respects with the Contract;
- b) refund any payment for the rejected goods; 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 Indemnity and insurance**

7.1 The supplier indemnifies the Council, its officers, employees and agents against all loss, damage, injury or expense the Council may sustain or incur as a result, whether directly or indirectly, of any breach of this contract, including any action or

claim for alleged infringement of any patent, copyright, registered design, trademark or any other intellectual property rights, by reason of the Council's receipt or enjoyment of the supplies.

7.2 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 goods and services, including as applicable, product liability insurance, public liability and professional indemnity insurance.

7.3 The supplier must provide evidence of such insurance upon request by Council.

## **8 Inclusive Price**

The price of the Supplies includes:

8.1 all taxes (excluding GST), duties and other imposts for which the Supplier is liable;

8.2 all insurance costs;

8.3 all amounts payable for the use thereof (whether in the course of manufacture or use of the patents, copyright, registered designs, trademarks, licences and other intellectual property rights);

8.4 all charges for supply of the goods or the performance of the services; and

8.5 no extra charges for testing, inspection, packing, delivery or otherwise.

## **9 Payments and Invoicing**

9.1 Council will pay for the Goods or Services no later than 30 days from the end of the month after Council's acceptance of the Goods or the satisfactory provision of the Services and receipt of a correctly rendered invoice.

9.2 A correctly rendered invoice must;

a) Identify the Purchase Order number

b) Include an invoice number, date of issue, the Supplier's full trading name, ABN and address

c) Include the Supplier's bank account details (if these have not previously been provided to Council),

d) Include a succinct description of each thing or service supplied and the quantity supplied

e) Show that the amount has been calculated in accordance with prices set out in the Purchase Order

f) the amount of GST charged on the invoice

g) where not all supplies are 'taxable', show separately the amounts for taxable supply, and those items not subject to GST

h) clearly identify Council as the customer and be addressed to the Chief Executive Officer care of Creditors.

i) Where GST is applicable, be a valid tax invoice under GST law.

9.3 If a Supplier does not provide Council with the information required, Council will be unable to process the invoice for payment and settlement of the invoice will be delayed.

9.4 If a Supplier does not provide Council with its ABN, Council will be required by law to withhold 48.5% from any payment it makes to the Supplier. This will be remitted to the Australian Tax Office (ATO) on the Supplier's behalf.

9.5 Invoices must not be issued prior to delivery/supply of relevant goods or services.

9.6 The supplier acknowledges that Council's method of payment is by electronic funds transfer directly into the supplier's bank account.

## **10 Title**

10.1 Goods remain at Supplier's risk until delivery is accepted by Council. Property in the goods will pass to the Council upon such acceptance.

## **11 Warranty**

The Supplier acknowledges and warrants that:

11.1 it is registered and holds all requisite licences, permits etc, required by Law and that are necessary to properly provide the Goods and Services and that such registration or licences/permits will remain current for the period of this Contract.

11.2 that all work shall be performed in the best and workmanlike manner and acknowledges that Council entered into this Contract relying on the particular skill, competence, experience and ability of the Supplier to provide the Goods and Services.

11.3 the Supplier has sufficient resources of all kinds to maintain efficient and timely provision of the Goods and Services.

11.4 the Supplier has knowledge of all the applicable Laws, business practices and standards which must be followed in providing the

Goods and Services and will comply with all applicable laws and standards.

11.5 the sale of any goods and the provision of any services by it to the Council does not infringe upon any applicable patent, trade mark, design or copyright. In the event of a breach of such warranty, the Supplier will indemnify the Council and any person to whom the goods may have been provided or the services rendered by the Council in respect of all costs and damages arising from any infringement of such trade mark, patent, design or copyright including the costs of defending any claim that any such trade mark, patent, design or copyright has been infringed.

11.6 in the case of Goods, the Goods will conform to its description in the Purchase Order Documents and any applicable specifications and shall be of good merchantable quality, free from defects in material and workmanship and fit for the purpose for which it is sold (if known to the Supplier) or for which such Goods is normally sold (in any other case). This warranty is in addition to and not to the exclusion of any warranty or service guarantee stated in the Purchase Order or implied by law.

11.7 in the case of the provision of Services, the Services will be:

a) performed 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;

b) suitable to Council's stated purpose; and

c) performed in accordance with the Purchase Order; and

## **12 Subcontracting and Assignment**

12.1 The Supplier must not, without the consent in writing of Council, assign its rights under the Contract or subcontract any part of the performance of the Contract.

12.2 The Supplier shall be liable to Council for the acts, defaults or omissions of subcontractors, employees and agents of subcontractors as if they were those of the Supplier. Approval to subcontract shall not relieve the Supplier from any liability or obligation under this Contract.

## **13 Work Place Health, Safety And Welfare**

13.1 The Supplier shall comply with the provisions of the Work place Health and Safety Act, 2011 and all associated regulations and shall ensure that its employees comply with all regulations, improvement notices, prohibition notices and codes

of practice issued there under and having application to this Contract.

13.2 The Supplier shall comply with all reasonable directions and procedures relating to security and work place health, safety and welfare as required by Council when the provision of Supplies occurs at the premises or facilities of the Council.

13.3 The Supplier agrees to immediately notify Council of any incident or accident arising from the undertaking of this Contract including those involving the public.

## **14 Intellectual Property**

14.1 If any intellectual property rights (the "Rights") are created by the Supplier in the manufacture, design or delivery of goods or services pursuant to the contract to which the Purchase Order relates, then the Supplier irrevocably grants to the Council the right to use the Rights at no further cost to the Council for such period of time as the Rights are required by the Council. Further, such grant shall extend to the use of the Rights by any

person authorised by the Council who engages in the use of the Rights in the course of carrying out activities for the Council in the course of the Council's functions.

### **15 Legislative Information/Obligations**

15.1 For the purposes of the Information Privacy Act 2009 (QLD) the Council discloses, and the Supplier agrees, that subject to the confidentiality provisions in these Terms and Conditions, any personal information concerning the Supplier received by the Council in the course of negotiating the contract or contained in the contract may be used by the Council for the purpose of satisfying any obligation the Council may have to provide information to comply with relevant requirements upon it pursuant to the Local Government Act 2009 (QLD), any Regulation made pursuant to that Act and to satisfy any enquiry of it by the QLD Department of Local Government.

15.2 For the purpose of the Right to Information Act 2009 (QLD), the Supplier must:

a) consult in good faith with the Council in relation to the disclosure of information relating to the contract following any access application being made to the Council under that Act; and  
b) provide the information to the Council which may be required from the Supplier pursuant to the Act.

15.3 For the purpose of the Workers Compensation and Rehabilitation Act 2003(QLD), Pay-roll Tax (Harmonisation) Amendment Act 2008 (QLD) and of the Industrial Relations Act 1999 (QLD) and any legislation which may replace such legislation the Supplier if it employs or engages workers or subcontractors in relation to the performance of any services under the contract to which such legislation relates must provide to the Council with its tax invoice a Subcontractor's Statement in a form which complies with such legislation together with a Certificate of Currency (when requested) to comply with the Workers Compensation and Rehabilitation Act 2003 (QLD). The Council may withhold payment of moneys otherwise payable to the Supplier under the contract until this clause is complied with by the Supplier.

### **16 Termination for Insolvency or Breach**

16.1 Without prejudice to its rights at common law, Council may, by notice in writing to the Supplier, terminate the Contract if the Supplier;

a) becomes bankrupt or insolvent; being a partnership, becomes dissolved; makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver or receiver and manager appointed; goes into liquidation or passes a resolution to go into liquidation, otherwise than for the purpose of reconstruction; or becomes subject to any petition or proceedings in a court for its compulsory winding-up or becomes subject to supervision of a court either voluntarily or otherwise; or suffers any execution against its assets; or

b) fails: (i) to commence performance of the Contract or to proceed at a rate of progress so as to ensure the due and proper completion of the Contract; or (ii) to take action to remedy a breach of any other obligation under the Contract within 7 days of being given notice by Council requiring the Supplier to remedy the breach; or to remedy a breach referred to in this paragraph within 14 days of being given the notice referred to; or

c) breaches any law of the Commonwealth of Australia or the State or Territory in which the breach occurs and such breach in the opinion of the Council, acting reasonably, adversely affects the supply or is likely to bring the Council into disrepute; or

d) assigns its rights otherwise than in accordance with the requirements of the Contract.

16.2 Where, before termination of the Contract under clause 15.1, Council has made any payment in advance on account of the contract price to the Supplier, the total amount of that payment must be repaid by the Supplier to Council on termination and, if not repaid is recoverable by Council from the Supplier as a debt.

16.3 If the Contract is terminated under this clause:

a) the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;

b) rights to recover damages are not affected; and

c) the Supplier must indemnify Council in respect of any loss it may incur in purchasing similar goods or services from other suppliers.

### **17 Termination for Convenience**

17.1 Council may at any time give notice in writing to the Supplier to terminate the Contract or any part without cause.

17.2 On receipt of the notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.

17.3 On termination of the Contract or any part under this clause, the Supplier may submit a claim for compensation and Council must pay to the Supplier such sums as are fair and reasonable in respect of the loss or damage sustained by the Supplier in consequence but the Supplier will not be entitled to claim compensation for any work done or expenditure incurred contrary to the Contract or for loss of anticipated profits.

17.4 The aggregate of any compensation and any sums paid or due or becoming due to the Supplier under the Contract will not exceed the contract price payable under the Contract.

17.5 If this clause is invoked, it will prevail over other inconsistent provisions.

### **18 Disputes**

18.1 Where a dispute between the parties has arisen from this Contract, the parties agree that they will, before taking any court proceedings or arbitration proceedings, meet within 5 Business Days (or such other period as agreed between the parties) of one party issuing a dispute notice to the other to negotiate in utmost good faith and endeavour to reach agreement concerning the matter in dispute.

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