

Edward River Council - Purchase Order Terms and Conditions

1. Introduction

(a) Council has requested that the Supplier supply Goods and/or Services to Council.

(b) The Supplier has agreed to supply Goods and/or Services to Council on the terms and conditions contained in this document.

(c) These Terms and Conditions do not apply to Goods and/or Services ordered from the Supplier in accordance with any other contractual arrangement between Council and the Supplier (including but not limited to; Supply of Goods or Services Agreement, Consultancy Services Agreement or Construction Contract).

2. Definitions

In this document:

"Supplier" means the organisation, individual, partnership or corporation with whom Council contracts for the supply of Goods and/or Services.

"Contract" means a legally binding agreement between Council and the Supplier for the Supplier to supply Goods and/or Services to Council in accordance with the Order on the terms contained in this document.

"Goods" means the Goods supplied to Council under the Contract.

"Heavy Vehicle" has the meaning given in the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW).

"Heavy Vehicle National Law" means any Legislative Requirement, principles of law or equity established by decisions of Australian Courts or requirements of persons with obligations relating to Heavy Vehicles including the Heavy Vehicle (Adoption of National Law) Act 2013 (NSW) and the Heavy Vehicle (Adoption of National Law) Regulation 2014 (NSW).

"Legislative Requirements" includes:

(a) Acts, regulations, laws, local laws, by-laws and ordinances 1.

(b) Orders, awards, codes, and proclamations of any Government Agency having authority in the country, state or territory in which the matters the subject of the Agreement or any part of it are being carried out and the requirements of any other relevant Government Agency.

(c) Certificates, licences, consents, permits, approvals, orders or industrial awards of any Authority and requirements of organisations having authority in connection with the performance of the Services and any Supporting Operations.

(d) Fees and charges payable in connection with paragraphs (a) to (c).

"Offer" means any written or verbal offer from the Supplier to supply Goods and/or Services to Council.

"Order" means any written or verbal request from Council for the Supplier to supply Goods and/or Services.

"Parties" means Council and the Supplier.

"Council" means Edward River Council and its successors.

"Services" means the Services supplied by the Supplier to Council under the Contract.

"Supporting Operations" means all facilities used or occupied by the Supplier which are associated with or ancillary to the performance of the Services.

3. GST

In this Clause (3) the following terms have the following meanings:

"GST" means a tax imposed under the GST Law.

"GST Law" has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made pursuant to any such Act.

"Supply" and **"Supplied"** have the meaning given by the GST Law.

"Value" in relation to a Supply has the meaning given by the GST Law.

(a) If the Supplier is or becomes liable to pay GST, in relation to any Supply under the Contract (a "Taxable Supply") the Supplier must issue an invoice or invoices to Council for the amount of GST referable to any Taxable Supply, such amount to be calculated by multiplying the consideration for the Taxable Supply by the rate of GST. The Supplier must include in the invoice such particulars as are required by the GST Law and such other information as Council may require so that Council may obtain an input tax credit under the GST Law for the amount of GST payable to the Supplier.

(b) In addition to the other consideration payable by Council to the Supplier, Council will pay to the Supplier the amount of GST calculated in accordance with Clause (3) hereof on the same basis and at the same time as the other consideration payable by Council to the Supplier.

(c) If any part of the consideration under the Contract is referable to both a Taxable Supply and anything that is not a Taxable Supply, the Value of any Taxable Supply shall be determined as required by the GST Law, or if no requirement exists, by the same portion of the consideration as the Taxable Supply is of all supplies under the Contract.

(d) If the abolition of, introduction of or a change in any GST ("GST Change") will result directly or indirectly in decreasing the costs to the Supplier of performing its obligations under the Contract, increasing the amount of any payment received by the Supplier from another person in relation to the performance of its obligations under the Contract, or reducing the payments the Supplier is required to make to another person in relation to any of its obligations under the Contract, then the Supplier must reduce the consideration by the amount of any decreased cost, increased receipt or decreased payment that directly or indirectly relates to the Contract.

(e) If Council determines it is entitled to a reduction in consideration under Clause 3(d) and that reduction is not made by the Supplier, then the Parties shall confer in good faith and agree whether a reduction is applicable and if so the amount of the reduction. Where a reduction is applicable the consideration payable by

Council under the Contract shall be reduced by the amount of the decreased cost, increased receipt or decreased payment arising from the GST Change as agreed between the parties.

4. Contract

(a) Provided the Offer remains open for acceptance, upon placing the Order, the Parties will be deemed to have entered into the Contract.

(b) An Order may be placed by telephone, email or surface mail. The Order is deemed placed upon Council sending the email or posting the Order. Confirmation of receipt by the Supplier is not required.

(c) The Contract comprises the following: (i) The Conditions of Order; (ii) The Order and any other documents expressly referred to in the Order; and (iii) The Offer.

(d) Where there arises any inconsistency or ambiguity between the documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from (i) to (iii) in Clause 4(c).

(e) If there is intent for a formal agreement, those terms and conditions will have precedence over Purchase Order Terms and Conditions where any ambiguity or discrepancy exists. No other conditions imposed by the Supplier either verbally or in writing prior to or subsequent to the placing of the Order will apply unless and until specifically accepted in writing by an authorised Council officer.

5. Price Increases

An increase in the price of Goods and/or Services under the Contract will only be permitted in the following circumstances:

(a) If, in the Offer, it was expressly stated that the price was subject to any increase in the cost of the Goods and/or Services to the Supplier and the Supplier produces evidence to the reasonable satisfaction of Council of the increase in costs.

(b) An authorised officer of Council approving the price increase in writing prior to Council receiving the Goods and/or the Services.

6. Specifications

(a) The Goods must be supplied in accordance with the specification, or description on the Order. No alternatives are to be supplied without the prior written approval of an authorised officer of Council.

(b) All performance data, measurements, specifications, dimensions, or other descriptive information quoted in the Order or in the Supplier's catalogues, brochures, descriptive literature or supplied by the Supplier will be binding on the Supplier within the tolerances specified in such documents.

(c) All Goods supplied must be in accordance with any relevant: (i) Australian standards and Commonwealth and/or State regulations in force as at the date of the Contract; and/or (ii) Other Legislative Requirements.

(d) As per Workplace Health and Safety Regulation 1997 Section 97, the Supplier will forward all necessary information regarding chemical composition safety measures and product treatment via Material Safety Data Sheets when delivering the Goods to Council.

(e) The Supplier must: (i) Provide the Services with due care and skill and to the best of its knowledge and expertise; (ii) Provide the Services in accordance with all Australian standards and Commonwealth and/or State regulations in force as at the date of the Contract; (iii) Provide the Services in accordance with all other Legislative Requirements; 17 (iv) Comply with all lawful policies and procedures published from time to time by Council relating to any matter connected with the supply of Goods and/or Services under the Contract, including but not limited to health, safety, planning and building, the environment and Council's Code of Conduct; and (v) Ensure that it and its employees attain and maintain, at the Suppliers sole cost, all necessary levels of competency and skill required by industry and statutory bodies to obtain registration or licensing to carry out the Services.

7. Packaging

(a) Any packaging necessary for the safe transport and storage of the Goods is deemed to be included in the price quoted in the Offer unless specifically excluded.

(b) The Offer, delivery documentation, packaging and the Supplier's Tax Invoice must specify where any packaging is returnable and the amount of deposit charges, if any. All returnable packaging which is charged on a refundable deposit basis or otherwise shall be clearly marked as such, bear a return address and will be returned freight forward at Council's convenience by a transporter selected by Council unless otherwise agreed.

(c) The Supplier shall provide with each consignment sufficient delivery documents to enable Council to identify the contents of each package and in addition shall endorse all packages, delivery documents, and invoices with Council's purchase order number.

8. Inspection and Test

(a) Council reserves the right to inspect and test as appropriate all Goods supplied.

(b) Where Goods fail such inspection and test, they will be rejected and the Supplier notified of their rejection and the reasons for same. The Supplier must do one of the following, as directed by Council: (i) Replace, free of charge, all rejected Goods with Goods of an acceptable standard; or (ii) Refund Council for the cost of the Goods and any other expense incurred by Council in respect of the rejected Goods.

(c) The decision as to whether the rejected Goods will be subject to a replacement or refund will be at Council's sole discretion.

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(d) Any rejected Goods shall: (i) Within 30 days from notification by letter or email, be removed by the Supplier at its own expense from Council's premises; and (ii) Be subject to any lien or other security interest Council may have.

(e) If, on the expiry of 30 days, the rejected Goods have not been removed, Council may return the Goods freight forward, and at the Supplier's risk, to the Supplier.

(f) All Goods of which the Supplier has received notice of rejection are held by Council at the Supplier's risk.

9. Delivery

(a) The Goods will be delivered to and the Services performed at such locations and at such times as nominated by Council.

(b) Upon delivery, the Goods shall be accompanied by a priced (GST inclusive) delivery document with the Order number nominated thereon. A separate Tax Invoice shall be sent to Council as soon as possible to the address on the Order and shall clearly state the contents of the delivery, pricing (including freight costs), the Order number and requesting officer's details.

(c) The price shall be inclusive of all freight, insurance, and other charges in or in connection with the forwarding of the Goods to Council.

(d) Any Goods or Services supplied by the Supplier remain at the risk of the Supplier and no liability, legal or otherwise, to pay for them shall arise until the Goods or Services are approved by Council and delivery is accepted in writing or by counter-signature.

(e) If the Goods or Services, or any part of the Goods or Services are not acceptable to Council, the Supplier shall reimburse Council for: (i) Any amounts paid by Council for unsatisfactory Goods or Services, or any part thereof; and (ii) Any costs incurred by Council in connection with the return of the Goods or Services or any part thereof.

10. Terms of Payment

Payment will be made by electronic funds transfer as soon as practical on receipt of tax invoice subject to:

(a) The price being in accordance with the Order or any price variation agreed in writing.

(b) Council being satisfied that the Goods and/or Services have been supplied in accordance with the Order.

(c) Receipt of a correctly issued Tax Invoice including any GST payable.

(d) A correct Order number being quoted on the Tax Invoice; and

(e) Council's terms of trading being 30 days from receipt of the Supplier's invoice, unless mutually agreed otherwise in writing.

11. Warranty

(a) The Supplier warrants that all the Goods delivered to Council: (i) Will conform to the relevant description of the same contained in the Contract; (ii) Shall be of merchantable quality and fit for the known purpose for which it is sold; (iii) Are new unless otherwise specified; and (iv) Are free from all liens and encumbrances and the Supplier has good marketable title thereto.

(b) The Supplier further warrants that: (i) It has all the necessary experience, skill and resources to perform and carry out its obligations in accordance with this document; and (ii) The Services will be performed with due skill, care and diligence and by appropriately qualified and trained personnel.

The above warranties are in addition to any warranty or guarantee provided by the Supplier in respect of all or part of the Goods and/or Services or as implied by law or any Legislative Requirements.

12. Indemnity

(a) The Supplier indemnifies Council in respect of all or any damage, cost, expense, or injury which occurs during the performance of the Services or supply of the Goods during the warranty period, whether caused by the Supplier or its employees, representatives, or other agents.

(b) The Supplier must effect and maintain the following insurances: (i) Workers' compensation insurance as required to comply with legislative requirements; (ii) If the Supplier is a sole trader, it must effect and maintain workplace personal injury insurance or some other form of insurance, reasonably required by Council; (iii) Public liability and products liability insurance to a minimum value of \$20,000,000; and (iv) Professional indemnity insurance to a minimum value of \$2,000,000 (where applicable).

At Council's request, the Supplier must produce evidence that the Supplier is maintaining the insurances required by this Clause 12(b).

13. Import Licences

If it is necessary for the performance of the Contract, for Council and/or the Supplier to hold or obtain any import licence, consent, by-law exemption, or authority then either or both Parties as appropriate shall be obliged to apply for same. If such licence, consent, by-law exemption, or authority is refused then either party may terminate this Contract by notice to the other Party and neither Party will be under any liability to the other.

14. Damage of Loss in Transit

Whilst the Goods are in transit, they are at the Supplier's risk.

(a) Where the Goods have either been lost or damaged in transit, the Supplier must, at Council's discretion, either replace the Goods or arrange for the Goods to be repaired to the satisfaction of Council.

(b) Council will sign all carrier's delivery documentation 'subject to check' and will notify the Supplier:

(i) In the case of damage, within three business days of receipt; or (ii) In the case of Goods lost in transit, within 10 business days from being notified the Goods have been lost.

15. Variation

Any variations required by Council or the Supplier to the Goods and/or Services must be agreed to by the Parties in writing and will be the subject of an Order amendment raised by an authorised officer of Council.

16. Cancellation

Orders may be cancelled on receipt of written notice from Council to the Supplier. Any cancellation charges to be applied by the Supplier will be notified by the Supplier to Council in writing at the time of cancellation. No cancellation charges will be accepted by Council other than those which have been advised to Council and which represent a genuine loss incurred by the Supplier through the cancellation of the Order.

17. Assignment

(a) Neither Party may assign the whole or any part of their benefits or obligations under the Contract without the consent of the other Party provided however that the consent of the other Party shall not be unreasonably withheld.

(b) The Supplier must not subcontract its obligations under the Contract without Council's prior consent. If the Contract is assigned with Council's consent, Council may require (in Council's sole discretion) the assignee to sign a deed of assignment or another similar document.

18. Heavy Vehicle National Law

The Supplier must, at all relevant times:

(a) Comply with, discharge its duties and ensure that its personnel comply with the provisions of the Heavy Vehicle National Law.

(b) Ensure as far as is reasonably practicable, the safety of the Supplier's and any of its personnel's transport activities relating to the use of any Heavy vehicles.

(c) Ensure that every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions), and

(d) Invite and permit Council to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions of the Heavy Vehicle National Law.

19. Interpretation

(a) Headings are for convenience and do not affect interpretation.

(b) The singular includes the plural and the plural includes the singular.

(c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

(d) A reference to a thing includes the whole or any part of that thing.

(e) The expression \$ or dollars means Australian dollars.

(f) Every obligation by the Supplier includes an obligation by the Supplier to ensure that each of the Supplier's representatives, agents and employees comply with that obligation.

(g) The Supplier acknowledges that it is entering into the Contract for commercial reasons and understands that certain terms of the Contract may be more favourable to Council.

(h) If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.

(i) Anything (including a right, obligation or concept) includes each part of it.

(j) If an example is given of anything, such as by saying it includes something else, the example does not limit the scope of that thing.

(k) A provision of this document must not be construed against a party only because that party was responsible for preparing that provision or this document.

(l) The Contract shall in all respect be construed and operate as an Australian Contract and shall be governed by the laws of the State of Queensland.

20. Notices

(a) A notice given under this document must be hand delivered or sent by prepaid post, or email to the Party's address for service.

(b) A notice given in accordance with this Clause 20 takes effect when received or as specified below: (i) If hand delivered, when delivered; (ii) If sent by prepaid post – on the third business day after the date of posting, if posted within Australia; or (iii) If sent by email – when, under the Electronic Transactions Act 200 (NSW), an electronic communication is taken to be received. However, if the time at which the notice has taken to be received is not a business day or is after 5:00pm on a business day, it is taken to be received at 9:00am on the next business day.

(c) A notice is taken not to be received, if: (i) In the case of service by post, the notice is returned to the sender because the postal service was unable to deliver it; and (ii) In the case of service by email, the party sending the notice receives an automated email response specifying that the email containing the notice was undeliverable.

(d) A notice given by email is taken to be in writing, whether or not the email is printed by the addressee.

(e) A notice given by email is taken to be signed by the Party if: (i) The Party's name is typewritten into the notice; or (ii) The Party's handwritten signature (which may be a digital image or a copy of a signature) appears in the notice.

(f) If the originator of the email receives a read receipt from the addressee, the email is taken to be received no later than the time and date specified in the read receipt. A read receipt does not by itself amount to an admission by the recipient regarding the content of effect of the notice.

(g) Nothing in this clause affects the provisions of the Electronic Transactions Act 200 (NSW) regarding attribution of electronic communications.