

1. CONTRACT

These conditions together with any specification, or correspondence provided by Eurobodalla Shire Council (**Council**) to the supplier identified in the Purchase Order (the '**Supplier**') in connection with the supply of goods or performance of services (the '**Specification**') and the Purchase Order shall constitute the contract and the entire terms of the agreement, between the Council and the Supplier ('**Purchase Order Contract**'). By this Purchase Order Contract Council orders the supply of the goods or performance of the services detailed in the Purchase Order and the Supplier agrees to supply the goods or perform the services and in doing so the Supplier must comply with the terms and conditions of this Purchase Order Contract. In consideration of the Supplier fulfilling its obligations Council will pay the Supplier, where Council accepted a lump sum, the lump sum as specified in the Purchase Order, or (b) where Council accepted rates, the sum of the products ascertained by multiplying the agreed rates by the corresponding quantities, or (c) where Council accepted a lump sum and rates, the aggregate of the sums referred to in (a) and (b), as may be adjusted in accordance with this Purchase Order Contract (the '**Price**').

2. THE GENERAL SCOPE OF PURCHASE ORDER**2.1 The Supplier must:**

- a) supply the goods or perform the services as required by the Purchase Order by the Date Required as set out in the Purchase Order;
- b) ensure that the goods supplied or services performed comply (including with regard to quantity, size and nature) with the Purchase Order Contract and any correspondence approved by Council's representative officer and any samples required and accepted by Council;
- c) supply the goods or perform the services for the Price as set out in the Purchase Order including any applicable rates of charge referred to in the Purchase Order Contract; and
- d) otherwise comply in all respects with the Purchase Order Contract including with respect to the sale, supply, delivery and payment of the goods or the performance of the services detailed in the Purchase Order.

2.2 No goods or services will be paid for, received or acknowledged without the issue to the Supplier of an official Council Purchase Order.

2.3 For the avoidance of doubt these terms and conditions will override any terms and conditions of the Supplier unless Council otherwise agrees in writing.

2.4 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 or services in substitution, but these must first be approved in writing by Council before delivery or performance.

3. QUALITY

The quality of the goods or services shall not differ from that specified in the Purchase Order Contract unless the change in quality is ordered by the Council representative in a written form specifically referring to the amendment of the quality. Any discrepancy between the quality required by the Purchase Order and any other document forming part of the Purchase Order Contract will be resolved as directed by Council acting reasonably, provided that where a discrepancy relates to the quality of materials to be supplied or the standard or requirement to be complied with by the Supplier, then the item which is more favourable to the Council will apply to the exclusion of the item that is less favourable to the Council.

4. STATUTORY REQUIREMENTS

The Supplier shall ensure that in supplying the goods or performing the services it complies with all applicable requirements of all Acts of Parliament, all ordinances, regulations, by-laws, orders, proclamations and recognised industry standards ('**Law**').

5. WORK HEALTH AND SAFETY

Consistent with clause 4, the Supplier shall ensure all goods provided or services performed under the Purchase Order Contract are delivered or completed in accordance with the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2017* (NSW) as amended from time to time. The Supplier is to carefully identify and manage risks specific to the category of good or service and understand its obligations.

6. SUBCONTRACTING AND ASSIGNMENT

6.1 The Supplier must not, without the consent in writing of Council, which shall not be unreasonably withheld or conditioned, assign its rights under the Purchase Order Contract or subcontract any part of the performance of the Purchase Order Contract.

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

7. DELIVERY AND ACCEPTANCE

7.1 Delivery of goods and services shall be made to such locations and at such time as shall be nominated by Council in the Purchase Order or associated Purchase Order Contract documents.

7.2 Council shall only be obliged to accept delivery of such goods or services as comply with the Purchase Order Contract.

7.3 Upon delivery of the goods or performance of the services the Supplier must provide a delivery document or completion document with Council's Purchase Order number nominated thereon. A separate tax invoice shall be sent to Council as soon as possible following delivery or performance which shall state clearly the contents of the delivery or the services performed, the Price, and Council's Purchase Order number and the requesting officer's details. Council's Purchase Order number should be quoted on all correspondence regarding the goods or services.

7.4 If the Purchase Order relates to the supply of goods:

- a) All relevant safety instructions, training and/ or operations manual (or similar) must be provided at time of delivery of any goods.
- b) Council reserves the right to reject and may return any goods which are faulty, unsuitable or otherwise not compliant with the Purchase Order Contract and withhold payment until the Supplier has supplied compliant goods or rectified the non-compliance as otherwise agreed with Council. Despite any other provision of this Purchase Order Contract, property in any rejected goods will pass to the Supplier upon rejection.
- c) All freight, insurance and other charges whatsoever in connection with the return of the goods and the delivery of a further supply of the goods shall be paid and borne by the Supplier.
- d) Upon rejection of any such element of the goods which are not acceptable to Council the Supplier shall reimburse Council for: i) any amounts paid by Council on account of the price of the returned goods; and ii) any costs incurred by Council in connection with the delivery or return of the goods.
- e) All elements of the goods delivered by the Supplier shall be at the risk of the Supplier and Council shall have no liability to pay for them until the goods are approved by Council and delivery is accepted in writing by Council.

8. PROPERTY IN THE GOODS

Where any part or progress payment for goods is made by Council the entire title of the property shall pass without exclusion or limitation, subject to Council's right to subsequent rejection in the

event that the relevant goods are discovered to not comply with the terms of the Purchase Order Contract.

9. INSURANCE

9.1 The Supplier shall maintain at its own expense adequate insurance including without limitation: a) public liability insurance of an amount no less than \$20,000,000; b) professional indemnity insurance (where relevant) of no less than \$2,000,000; c) insurance of its employees as required by Law; and d) automotive insurance on such terms or for such amounts as are reasonable in the circumstances of the Purchase Order.

9.2 If required by Council the Supplier shall provide to Council evidence of all policies of insurance above and the currency thereof prior to the Supplier delivering the goods or performing the services.

10. TERMS OF PAYMENT

10.1 Council shall pay the Price to the Supplier on receipt of a correctly rendered and dated Tax Invoice subject to:

- a) The Price being in accordance with the Purchase Order Contract and unless otherwise stated, shall be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the time of acceptance of the quote or tender, all freight insurance and other charges in connection with the forwarding of the goods to Council.
- b) The goods or services being received or performed and accepted by Council as satisfying the Purchase Order Contract;
- c) Goods and Services Tax being included in the Price where applicable; and
- d) A correct Purchase Order number being quoted on the tax invoice.

10.2 Council's terms of payment are 30 days from receipt of a correctly rendered invoice for the goods or services. This may be varied where Council accepts a discount offered by the Supplier for earlier payment.

10.3 If the Supplier does not provide Council with its ABN/ACN, Council will be required by law to withhold 46.5% from any payment it makes to the Supplier. This will be remitted to the Australian Tax Office (ATO) on the Suppliers behalf.

11. WARRANTY

11.1 The Supplier warrants that all goods or services delivered to Council:

- a) will conform to the relevant description of the same contained in the Purchase Order Contract;
- b) the goods shall be of good merchantable quality for the known purpose for which it is sold, new (unless otherwise specified), free from all liens and encumbrances and the Supplier has a good marketable title thereto;
- c) the services will be performed in the best workmanlike manner with due care and skill by competent and trained personnel; and
- d) shall be delivered or performed by the Date Required specified on the Purchase Order.

11.2 These warranties are in addition to any warranty or guarantee provided by the Supplier in respect of the relevant element of the goods or services or as otherwise implied by Law.

12. GENERAL MATTERS AND DEFINITIONS

12.1 Unless otherwise provided all references to sums of money shall be in terms of Australian currency, all documents and communications shall be in the English language and all references to measurements, quantities, dimensions and units shall be in terms of Commonwealth legal units.

12.2 The Supplier must not represent itself as being an employee or agent of Council or as otherwise able to bind or represent Council.

12.3 (**Assignment**) The Supplier shall not, without the prior written approval of Council, which shall not be unreasonably withheld or conditioned, assign the Purchase Order Contract or assign, mortgage, charge, encumber any of the moneys payable under this Purchase Order.

12.4 (**Part Acceptance of Purchase Order**) Where Council has accepted an element of the goods that constitute part of a "Materials Request" Council shall pay the Supplier that part of the purchase price attributable to that element of the goods accepted.

12.5 (**No Waiver**) No failure or delay on the part of a party to exercise any right or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any such right or remedy preclude any other further exercise thereof or exercise of any right or remedy.

12.6 (**Disputes**) Where a dispute between the parties has arisen from this Purchase Order Contract, the parties agree that they will, before taking any court proceedings or arbitration proceedings, meet within five (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. This clause 12.6 shall not prejudice the rights of either party to seek urgent or declaratory relief.

13. SPECIAL CONDITIONS

Any special conditions that Council shall incorporate on the Purchase Order shall be incorporated in the Purchase Order Contract and in the event of any inconsistency with these terms and conditions such special conditions shall prevail.

14. TERMINATION

14.1 Council may, at any time and in its absolute and sole discretion, terminate this Purchase Order Contract by giving the Supplier written notice.

14.2 Upon termination in accordance with clause 14.1, Council will pay the Supplier that part of the Price, as applicable, for any goods delivered or services performed up to the date of termination.

14.3 If Council terminates this Purchase Order Contract under clause 14.1 then: a) Council or other persons engaged by it may provide the goods or services and Council or those persons may purchase all materials and goods and do anything else necessary to supply of goods or perform the services; and b) Council will not be liable to the Supplier for and the Supplier will not be entitled to claim from Council any losses, expenses, costs, damages or liabilities suffered or incurred by the Supplier under this Purchase Order Contract or otherwise arising out of or as a consequence of the termination under clause 14.1, other than the amounts to be paid by Council under clause 14.2.

15. GST

15.1 Words used in the Purchase Order Contract that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given in that legislation. Unless otherwise specified, all amounts payable under the Purchase Order Contract are exclusive of GST and must be calculated without regard to GST.

15.2 If a supply made under the Purchase Order Contract is a taxable supply, the recipient of that taxable supply (Recipient) must, in addition to any other consideration, pay to the party making the taxable supply (Supplier) the amount of GST in respect of the supply. The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.

15.3 If there is an adjustment to a taxable supply made under the Purchase Order Contract then the Supplier must provide an adjustment note to the Recipient. The amount of a party's entitlement under the Purchase Order Contract to recovery or compensation for any of its costs, expenses, losses, damages or other liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses, losses, damages or liabilities.

15.4 This clause 15 will survive the termination of the Purchase Order Contract.