

## 1. VALIDITY OF PURCHASE ORDER.

Only Purchase Orders, signed or authorised electronically by the Authorised Signatory, on official Council Purchase Order forms will be recognised by the Council.

## 2. PURCHASE ORDER.

If the Council issues a Purchase Order for the Items to the Supplier, the Supplier will not invoice this Purchase Order at higher prices than specified without Council's prior written consent.

If the price is omitted, the Items will be billed at the price last quoted to Council or paid to Supplier by Council, or at the prevailing market price, whichever is lowest.

Supplier will not provide services under this Purchase Order using any individual who has been previously employed by Council as a regular full or part-time employee in the twenty-four months immediately preceding the date Supplier begins to perform the services, without Council's prior written consent.

## 3. GST.

If GST is imposed on any supply made under or in connection with this Purchase Order, the Supplier is responsible for any payment imposed on any Taxable Supply.

The Supplier may recover from Council, in addition to the price, an amount equal to the GST payable in respect of that Supply.

The Supplier must first provide Council with a valid tax invoice before Council will pay the GST amount to the Supplier.

## 4. AMENDMENTS.

Prior to completion of the Purchase Order, Council, by a written notice at any time, may make changes in the specifications, designs or drawings, samples or other description to which the Items are to conform by providing Supplier with a written notification of the required amendments.

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, an equitable adjustment may be made in the price or delivery schedule, or both, and this Purchase Order will be modified in writing accordingly.

Any claim by Supplier for an adjustment must be made in writing within thirty (30) days of the receipt of written notice of the changes from Council. Nothing in this clause will excuse the Supplier from proceeding without delay to perform this Purchase Order as amended.

## 5. PACKAGING AND PACKING.

Supplier will properly package and pack the Items in containers to permit safe and secure transportation, to withstand rough handling during transportation and to reach their destination undamaged.

Supplier will also adhere to packaging requirements as specified by Council. All Items must be protected from dust, moisture, salt, climatic or any other factors from the time they leave the place of manufacture, until such time when they are received by Council at the designated delivery address.

A delivery note referencing the Purchase Order and clearly identifying the packages' content will accompany each delivery.

Each purchase order must be packaged separately; multiple orders must not be packaged together.

## 6. DELIVERY AND PROVISION OF SERVICE.

Supplier will deliver the Items, DDP, at the time and to the place specified in this Purchase Order.

DDP means delivered duty paid as defined in the International Chamber of Commerce INCOTERMS 2000 Edition.

Supplier will deliver the Items at the time specified in the Purchase Order.

If no delivery date is specified, the Purchase Order will be completed promptly, and delivery will be made by the most expeditious form of transportation at no additional expense to Council.

No concession with respect to delay in delivery, dispatch or completion will be construed as a waiver of Council's rights and remedies unless specifically agreed in writing.

Council will be entitled to cancel this Purchase Order should Supplier fail to deliver all of the Items required by the times specified and to claim damages for breach of contract.

In the event the Items are delivered incorrectly or to the incorrect destination, Supplier will at its own expense collect and re-deliver the correct Items to the correct location and 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.

## 7. RISK AND TITLE.

Supplier warrants that it holds title to the Items.

Title and risk in the Items will remain with the Supplier until they are delivered and accepted by Council, except where Council, for whatever reason, pays for the Items either in full or in part, in advance of the receipt, in which case title is deemed to have passed to Council, and the Supplier will adequately insure Council's property in its possession until delivery.

Until installation, if applicable, and acceptance by Council, risk in the Items will remain with the Supplier regardless of full or partial payment for the Items prior to installation and acceptance.

Title to samples provided to Council by the Supplier, passes to Council on delivery, unless otherwise agreed in writing.

## 8. ACCEPTANCE.

All Items will be subject to inspection and test by Council.

If any of the Items ordered are found to be defective or not in conformity with the specifications of this Purchase Order, Council may at its option:

- reject and return such goods at Supplier's expense or
- require Supplier to replace non-conforming goods with goods that conform to this Purchase Order.

Council will not be obliged to pay for any Items not accepted by Council.

## 9. PRICE.

Prices specified in this Purchase Order will remain firm and fixed.

Prices include any and all charges including but not limited to GST, taxes, duties, inspection charges, packaging and delivery costs unless separately listed.

## 10. INVOICES.

Supplier will submit invoices only upon delivery of all Items or completion of all services as specified in the Purchase Order.

Invoices will contain the following information as applicable: Purchase Order number, line item number, part number and/or description of materials or service, quantity, unit of issue, unit price, and extended totals.

Any applicable taxes will be shown separately on the invoice.

In addition, unless otherwise specified in this Purchase Order or any written agreement, Council will not be obligated to pay Supplier for Items if Supplier presents the invoice for such Items to Council more than one-hundred eighty (180) days after the date the applicable fees are due.

Invoices will be sent to the invoice address indicated on this Purchase Order.

Copies of invoices will not be accepted unless certified.

Upon Council's request, Supplier will invoice Council electronically.

Council will reject any invoice that does not include a valid Purchase Order number.

## 11. PAYMENT.

Payment and discount period will be computed from the date of receipt of invoice. Council will pay thirty (30) days after the month end of the invoice date on receipt of a valid and correctly submitted invoice, but no earlier than when such invoice is due. Payment will be deemed to have been made on the date Council sends payment.

Payment will not constitute acceptance and will not waive or otherwise affect Council's right to inspect the Items or to reject such non-conforming Items.

Adjustments will be made by Council for rejected Items or for any over-payment due or, at Council's option, any such over-payment will be promptly refunded by Supplier upon request.

#### 12. COUNCIL PROPERTY RIGHTS.

All products, inventions, documents, writings, software (including modifications and documentation), and other materials prepared or produced by the Supplier under this Purchase Order (collectively, the "Developments") will be the sole and exclusive property of Council.

Supplier assigns to Council at no additional consideration all right, title and interest and all Intellectual Property Rights in such Developments and all extensions and renewals.

Supplier agrees not to assert at any time, and otherwise waives, any "moral rights" that Supplier may have in the Developments, and Supplier assigns to Council all moral rights in relation to this Purchase Order.

#### 13. WARRANTY.

Supplier represents that there exists no actual or potential conflict of interest concerning its obligations under this Purchase Order.

Supplier will not bring to Council or use in the performance of Supplier's duties under this Purchase Order any materials or documents of another party considered confidential or proprietary unless Supplier has obtained written authorisation from such party.

Services Warranty. In addition, Supplier represents and warrants that 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, Supplier represents and warrants that the Services will be performed and completed in accordance with applicable specifications and will be correct and appropriate for the purposes contemplated in this Purchase Order.

#### Item Warranty.

In addition, Supplier represents and warrants that the Item(s):

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

Supplier agrees that it will make spare parts available for a period of five years from date of shipment at Suppliers' then current prices less applicable discounts.

In the event Council identifies a warranty problem with the Items during the warranty period, Council will promptly notify Supplier and 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.

All expenses associated with the return to Supplier of such Items and the delivery to Council of repaired or replacement Items will be borne by Supplier.

Unless otherwise agreed in writing, all Items will be warranted as specified for a minimum period of twelve (12) months from acceptance by Council.

Re-performed services and repaired or replaced Items will be warranted an additional 12 months, from the replacement date.

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.

These representations and warranties will be in addition to any other conditions or warranties, written or oral, whether expressed or implied by statute or otherwise.

#### 14. QUALITY STANDARDS.

Unless otherwise specified in this Purchase Order, the Items supplied must conform to ISO standards where such exist or other recognised applicable standards.

#### 15. INDEMNITY.

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

- (i) any claim that the Items infringe or misappropriate a copyright, patent, trademark, trade secret, or any other intellectual property or proprietary right of any third party,
- (ii) Supplier's breach of warranty, negligence, wilful misconduct, fraud, misrepresentation, or violation of law and
- (iii) any property damage, personal injury or death which results from the Items provided under this Purchase Order.

#### 16. SUB CONTRACTING

The Supplier must not, without consent in writing of the Council, sub contract the whole or any part of the work or manufacture or supply of the Items.

The Supplier will be liable to the Council for the acts and omissions of any sub-contractor as if those were the acts or omissions of the Supplier.

#### 17. INSURANCE.

Supplier will insure all Items sent by Council to the Supplier for any purpose connected with this Purchase Order against loss or damage while in the Supplier's custody or control to the full extent of their value.

Supplier shall maintain and cause Supplier's subcontractors to maintain during the term of this Purchase Order:

- (a) Public and Products Liability Insurance of at least \$20,000,000 for each occurrence; and
- (b) Worker's Compensation Insurance as required by law; and
- (c) Professional Indemnity Insurance of at least \$10,000,000; and
- (d) Motor Vehicle Indemnity Insurance of at least \$20,000,000.

All insurance will designate Council, its officers and employees (all referred to as the Council) as additional insured.

All such insurance must be primary and non-contributory.

Any other coverage available to the Council will apply on an excess basis.

Supplier agrees that Supplier, supplier's insurer(s) and anyone claiming by, though, under or in Supplier's behalf will have no claim, right of action or right of subrogation against the Council based on any loss or liability insured against under the foregoing insurance.

Supplier and supplier's subcontractors will furnish certificates of insurance, including if specially requested by the Council, endorsements and policies.

The Council will be notified in writing at least thirty (30) days prior to cancellation of or any change in the policy.

Insurance companies providing coverage under this Purchase Order must be licensed under any applicable legislation or otherwise be approved by Council.

#### 18. TERMINATION.

Council may terminate all or any part of this Purchase Order in the event of any default by Supplier. In addition, Council may terminate this Purchase Order at its discretion for any reason.

Upon termination, Supplier will deliver to Council such work in progress or completed Items as the Council's representative may request.

Council will have no liability to Supplier beyond payment for Items accepted by Council's representative prior to Supplier's receipt of notice of termination and for such additional Items specifically requested in writing and accepted by Council.

#### 19. LIMITATION OF LIABILITY.

In no event will Council be liable to 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.

#### **20. CONFIDENTIALITY.**

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.

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

- (a) all Developments,
- (b) all software, documentation, financial, marketing and customer data and other business information, and
- (c) 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.

Supplier agrees to use the Confidential Information received under this Purchase Order solely for the purposes of performing its obligations under this Purchase Order.

Supplier will not disclose or make Confidential Information available to any third party, except as specifically authorised by Council in writing. All Confidential Information furnished to Supplier will remain solely the property of Council.

Supplier further agrees that all Confidential Information and any other information received from Council, including all copies in any form, will be returned to Council upon completion or termination of this Purchase Order.

#### **21. ASSIGNMENT.**

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

Any purported assignment without such written consent will be null and void.

#### **22. COMPLIANCE WITH LAWS.**

Supplier agrees to comply fully with all applicable federal, state, or local laws, rules, or regulations.

#### **23. GOVERNING LAW.**

This Purchase Order will be governed by and construed in accordance with the law of the State of Queensland, and the parties submit to the jurisdiction of the courts of that State and all courts competent to hear appeals.

#### **24. PUBLICITY.**

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.

#### **25. RELATIONSHIP OF THE PARTIES.**

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

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

Supplier will not act for or in the place of Council in Council's relations with third parties. Council is not responsible for withholding or deducting from the compensation of Suppliers employees, agents and subcontractors, any sums for income taxes, workers compensation or disability insurance coverage, superannuation plans or the like.

Supplier specifically agrees to pay any and all taxes and other payments lawfully due in connection with the compensation received under this Purchase Order.

#### **26. ETHICS.**

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 gifts or entertainment of significant cost or value, nor enter into any personal business arrangement with 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.

#### **27. SEVERABILITY.**

Any provision of this Purchase Order held to be invalid or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Purchase Order will remain in full force and effect.

#### **28. WAIVER.**

A waiver by either party of any default or of any term or condition of this Purchase Order will not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

#### **29. SET-OFF.**

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.

#### **30. NOTICES.**

All notices under this Purchase Order will be sent to the named individuals at the respective address indicated in the Purchase Order, or as amended by either party in writing.

All such notices so addressed will be deemed duly given:

- (a) upon delivery, if delivered by courier or by hand (against receipt); or
- (b) three days after posting, if sent by certified or registered mail, return receipt requested.

Notices should be forwarded to Moreton Bay Regional Council, at the address shown on the Purchase Order.

#### **31. ENTIRE AGREEMENT.**

The Purchase Order and the written agreement, if any, between Supplier and Council governing this transaction will constitute the entire agreement between the parties.

No modifications may be made unless in writing and signed by both parties. If there is a conflict between a clause of this Purchase Order and a clause in a written agreement between Supplier and Council, the clause in the written agreement will supersede this Purchase Order.

#### **32. SURVIVAL.**

The obligations set forth in clauses 12,13, 15, 17, and 19 through 33 will survive any expiration or termination of this Purchase Order.

#### **33. SUPPLIER TRAVEL.**

If applicable, any travel related expenses must first be approved in writing by an Authorised Signatory.

**DEFINITIONS;** In these Terms and Conditions:

**Authorised Signatory** means the designated representative of Council duly authorised to make such a commitment.

**Council** means the Moreton Bay Regional Council whose registered office is at 220 Gympie Road, Strathpine, Qld., 4500, its subsidiaries, authorised representatives, successors and permitted assigns.

**GST** has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.

**Items** mean the goods, licenses, equipment or Services to be provided under this Purchase Order.

**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 and these Terms and Conditions.

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

**Taxable Supply** has the same meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999.