

GENERAL TERMS AND CONDITIONS OF SUPPLY

1. In these Conditions:

“**Council**” means Leeton Shire Council (ABN 59 217 957 665)

“**Council Improvements**” means any adaption, improvement, variation or amendment to any of the Goods or Services or associated processes, procedures, materials or content developed by the Council or the Supplier at the request of, or in conjunction with, the Council during the course of this Procurement Agreement.

“**Conditions**” means these terms and conditions.

“**Confidential Information**” means in relation to a party, information that:

- a) is by its nature confidential;
- b) is designated by that party as confidential; or
- c) the other party knows or ought to know is confidential; and
- d) is not in the public domain.

“**F.I.S**” means free into store delivery, which requires the Supplier to pay all costs and be responsible for all requirements associated with the supply and delivery of Goods to the Council at the delivery site described in the Order, including all costs associated with transport, insurances, licences, authorisations, duties and taxes.

“**Goods**” means the goods to be supplied by the Supplier to the Council as described in the relevant Order, Specifications, and/or Procurement Agreement.

“**GST**” means the goods and services tax imposed in Australia by A New Tax System (Goods and Services Tax) Act 1999 and the terms “taxable supply” and “tax invoice” have the same meaning as in that Act.

“**Intellectual Property**” means inventions, innovations, patents, patent applications, trademarks, designs, circuit layouts, Confidential Information, trade secrets, creative items, artistic works, audio and/or visual recordings, copyrighted items, computer programs, technical know-how and commercially sensitive or valuable information or any other right in respect of intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967 (as amended from time to time).

“**Intellectual Property Rights**” means all current and future registered and unregistered rights in respect of Intellectual Property.

“**Order**” means a purchase order for Goods or Services provided to the Supplier by the Council.

“**Personnel**” means all employees, agents, consultants and sub-contractors of a party.

“**Price**” means the price of Goods or Services as identified in the Order or otherwise agreed between the Council and the Supplier in writing.

“**Procurement Agreement**” means any written agreement between the Council and the Supplier for the procurement by the Council of Goods or Services. For the avoidance of doubt, this does not include any general terms and conditions of sale issued by the Supplier, but does include any submission, scope, drawings, plans, or explanation provided by the Supplier in relation to the Supplier's performance that is accepted by the Council.

“**Services**” means the services to be supplied by the Supplier to the Council as described in an Order and/or Procurement Agreement.

“**Specifications**” means the specifications as to the type and quality of the Goods or Services set out in an Order, Procurement Agreement and/or as otherwise advised by the Council to the Supplier.

“**Supplier**” means the supplier of Goods or Services to the Council.

“**Transport Safety Laws**” mean all Federal and State legislation and regulations, and any policies with the force of law, relating to safe carriage of freight by road and related occupational health and safety issues, including but not limited to:

- a) observing vehicle dimension and mass limits;
- b) properly securing loads;
- c) managing drivers' hours; and
- d) ensuring that enough time is allowed for each journey, including loading, offloading and transit.

2. Except as otherwise agreed in writing by the Council, these Conditions constitute all of the terms of the Procurement Agreement for the procurement of the relevant Goods or Services by the Council from the Supplier. All other terms and conditions, express or implied, including any alternate terms proposed by the Supplier, are excluded to the fullest extent permitted by law.
3. In the event of any ambiguity, discrepancy or inconsistency arising between these general terms of supply and any Procurement Agreement, then the terms of the Procurement Agreement will take precedence to the extent of the ambiguity, discrepancy or inconsistency.
4. The Supplier agrees:-
 - a) to supply the Goods or Services requested in an Order in accordance with these Conditions, the terms of any applicable Procurement Agreement and the Order itself; and
 - b) if required to provide Council representatives with access to its premises and work areas, and appropriate documentation to check compliance (as defined in ANZ/ISO 8402 and/or AS1199) of the completed Goods and Services before acceptance.
5. The Supplier must comply with all applicable laws, regulations, ordinances and standards of Australia, generally, and New South Wales, in particular, which relate to the supply, manufacture, labelling, transportation, importation, licensing, approval or certification of the Goods or the supply of the Services. For the avoidance of doubt, the Supplier:-
 - a) is responsible for ensuring the work health and safety of its employees, agents and contractors engaged in the performance of the Procurement Agreement and must in the course of performing the Procurement Agreement comply with its work, health and safety obligations under any relevant statute;
 - b) is required to effect adequate controls in accordance with statutory requirements to ensure protection of the environment;
 - c) is responsible for ensuring compliance with all applicable laws relating to the employment or engagement of people who work or volunteer with children in relation to the supply of the Goods or Services, including mandatory reporting and working with children checks however described; and
 - d) must deliver and transport the Goods in accordance with all applicable laws including Transport Safety Laws. Without limitation, the Supplier must ensure that any transport provider used in relation to the delivery of Goods has all appropriate qualifications and certifications and complies with relevant Transport Safety Laws.
6. The Supplier will supply the Goods or Services to the Council for the Price. Subject to these Conditions, the Price will not be changed without the Council's prior written approval.
7. In respect of the supply of Goods, unless otherwise expressly stated, the Price is on an F.I.S basis.
8. Invoices for Goods or Services supplied in accordance with the Procurement Agreement must be sent to the Council's Accounts Payable Department at ap@leeton.nsw.gov.au.
9. Each invoice for Goods or Services supplied under the Procurement Agreement must constitute a tax invoice, identify the Order to which it relates and include all data and information reasonably requested by the Council so as to enable the Council to verify that the Goods or Services have been supplied in accordance with the Procurement Agreement and that the invoice relates to the relevant the Order.
11. The Council is not liable to pay for Goods or Services unless it receives an invoice for the Goods or Services that complies with the requirements of these Conditions.
12. Unless otherwise agreed, amounts due by the Council for Goods or Services supplied in accordance with the Procurement Agreement will be paid within 30 days from the end of month that the invoice, that complies with these Conditions, is received from the Supplier. However, the Council will be entitled to off-set any amounts payable by the Supplier to the Council against amounts due by the Council to the Supplier.
13. If the sale of Goods or Services by the Supplier to the Council constitutes a taxable supply, the Council must pay to the Supplier an additional amount equal to the GST subject to the Supplier providing a tax invoice.
14. The Supplier must deliver Goods to the nominated delivery site(s) by the delivery date(s), as described in the Order.
15. Order numbers must be clearly shown on all invoices, delivery notices, shipping papers, containers and packing lists.
16. Without limiting other rights, it may have, the Council is not bound to accept or pay for Goods or Services if, in the Council's reasonable opinion, they do not comply with any requirements of the Procurement Agreement (including the Specifications or relevant Order), specifically clause 22. The Council may, at its option, return those Goods at the Supplier's expense or have the Services re-supplied by a third party at the Supplier's expense.

17. Either party may terminate the Procurement Agreement in any of the following circumstances:
 - a) to the extent permitted by law, the other party enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, enters into administration, or becomes insolvent;
 - b) the other party is in material breach of its obligations under the Procurement Agreement (including noncompliance with an Order or Specifications) and does not remedy that breach within 20 business days after receiving notice from the other party; or
 - c) there have been repeated minor breaches of the Procurement Agreement.
18. Prior to termination in accordance with clause 17, the terminating party must issue a 'show cause' letter, seeking the other party to provide reasons why the Procurement Agreement should not be terminated. Such explanation must be issued to the terminating party as soon as reasonably possible, but no later than 10 working days. Upon receipt of the 'show cause' letter, the Council must decide whether to terminate the Procurement Agreement and write to the other party explaining its decision and providing reasons.
19. Subject to clause 16, risk in, and ownership of, the Goods and Services passes to the Council on acceptance of the Goods by the Council at the delivery site.
20. The Supplier acknowledges that all Intellectual Property Rights subject to this Procurement Agreement becomes the property of the Council upon acceptance, pursuant to clause 19. The Supplier accepts and acknowledges that express transfer of its Intellectual Property Rights to Council is effected within this Procurement Agreement.
21. The Supplier must take out and maintain suitable and appropriate levels of:-
 - a) workers' compensation insurance in respect of its employees
 - b) comprehensive public and product liability insurance of not less than AU\$20 million per event (or other amount, with the Council's agreement) in relation to the Goods and Services supplied under this Procurement Agreement. Without delay, the Supplier must provide to the Council evidence of relevant insurances by presenting information requested by Council, such as but not limited to, certificates of currency.
22. The Supplier warrants that the Goods and Services:
 - a) are fit for the purpose intended for goods and services of their nature;
 - b) are fit for the purpose for which the goods were acquired by the Council, where that purpose was specified by the Council prior to ordering the Goods;
 - c) will match any description or sample of the Goods provided by the Supplier;
 - d) are of acceptable quality and free from any contamination or defects;
 - e) comply with the Specifications and any other quality standards specified in the Procurement Agreement;
 - f) comply with all applicable laws, regulations and standards;
 - g) are supplied to the Council free of any encumbrances and third party rights; and
 - h) do not infringe the Intellectual Property Rights of any third party.
23. Where any of the Goods supplied under the Procurement Agreement are subject to a manufacturer's warranty, the Supplier must provide details of that warranty to the Council at the time of delivery and ensure that the Council has the benefit of the warranty.
24. In relation to the Services, the Supplier warrants that:
 - a) time is of the essence;
 - b) it has the necessary expertise, Personnel, plant, equipment and facilities to provide the Services in accordance with the Procurement Agreement;
 - c) all Personnel engaged in the provision of the Services will be suitably qualified and experienced;
 - d) it holds all necessary licences, authorisations and consents to perform and provide the Services;
 - e) the Services will be fit for the purpose for which the Services are required by the Council;
 - f) the Services will be performed with due care, diligence and skill and in a timely and professional manner;
 - g) it will provide the Services within a reasonable time, when no timeframe is specified; and
 - h) the Services comply with the Specifications.
25. The Supplier indemnifies the Council against any liability, loss, damage, costs (including legal costs on a solicitor and own client basis) or expense incurred by the Council as a result of or in connection with:
 - a) any breach of the Procurement Agreement by the Supplier;
 - b) any fraud, wilful default, negligent act or omission, or corrupt activities of the Supplier or its Personnel in connection with this Procurement Agreement; or
 - c) the death or injury to any person or loss or damage to property arising from the performance by the Supplier of its obligations under the Procurement Agreement.

26. Without limiting the generality of the indemnity in clause 25 or the right to terminate in Clause 17, the Supplier must, upon request from the Council, promptly and at its own cost:
 - a) replace any Goods that do not comply with the Specifications or any other requirements of the Procurement Agreement, whether or not the Goods have been paid for by the Council; and
 - b) re-supply the Services or pay for the cost of re-supplying the Services at the Council's direction if, in the Council's reasonable opinion, the Services do not comply with the Procurement Agreement, whether or not the Services have been paid for by the Council.
27. The indemnity in clause 25 will continue to apply after the termination or expiration of the Procurement Agreement.
28. Each party must not, without the prior written consent of the other party:
 - a) disclose the Confidential Information of the other party to any other person; or
 - b) use the Confidential Information of the other party for any reason other than the furtherance of the business relationship between the parties.
29. Each party must, upon termination or expiration of the Procurement Agreement, deliver to the other, or destroy, all copies of the Confidential Information of the other in the care or control of the first party.
30. The Procurement Agreement is governed by and construed in accordance with the laws of the State of New South Wales. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.
31. A waiver by a party of any provision or breach by the other party of this Procurement Agreement cannot be construed as a waiver of any other provision or breach.
32. The Procurement Agreement sets out the entire agreement between the Council and the Supplier in relation to the supply of Goods or Services. No variation to this Procurement Agreement is valid unless it is set out in writing signed by the Council and the Supplier.
33. Any provision of the Procurement Agreement that is illegal, void or unenforceable will be severed without affecting the other provisions.
34. The Council and the Supplier will not be in breach of the Procurement Agreement or otherwise liable to the other party for any failure to perform or comply with any of its obligations under the Procurement Agreement if that failure arises from a cause or circumstance beyond its reasonable control including acts of God, fire, floods, storms, pandemics, natural disasters, acts of war or terrorism, sabotage, acts of government or regulatory authority, strikes or other industrial disputes or court orders.
35. The Supplier cannot, without the Council's prior written consent, assign or sub-contract any of its obligations under the Procurement Agreement to a third party.