

PURCHASE ORDER (FOR THE SUPPLY OF GOODS AND/OR SERVICES)

LISMORE CITY COUNCIL - GENERAL TERMS AND CONDITIONS

- 1. SUPPLY**
 - a. The Supplier shall supply the Goods and/or perform the Services by the Due Date, and the Purchaser shall pay the Supplier the Price, in accordance with the Contract.
 - b. These terms apply to the exclusion of any preceding, subsequent or other terms and conditions, unless stated on the Purchase Order or as expressly agreed to in writing by the Purchaser.
- 2. PRICE**
 - a. The Price is inclusive of all costs, expenses and liabilities incurred by the Supplier in the supply of the Goods or the Services including but not limited to, in respect of Goods, all charges for customs duty (unless specifically exempt), packing, handling, insurance and freight and delivery and, in respect of the Services, the provision and maintenance of all materials and resources and the supply of all tools and equipment necessary to perform the Services.
 - b. The Price is not subject to change including, without limitation, to rise and fall, without the prior written approval of the Purchaser.
 - c. If GST is payable in connection with the Goods or the Services to be supplied under the Contract, the Supplier may recover from the Purchaser an amount equal to the GST payable in respect of that supply.
- 3. CONFORM TO SPECIFICATIONS**
 - a. The Goods and/or the Services shall comply with such specifications, drawings, samples or other description (if any) furnished by the Purchaser to the Supplier prior to or in conjunction with issuing the Purchase Order. Any inspection conducted under clause 5.1 by a representative of the Purchaser will not affect this requirement unless expressed in writing by the Purchaser.
 - b. In supplying the Goods and/or performing the Services or undertaking any work under the Contract, the Supplier will observe and comply with all applicable laws and statutory requirements, codes, licenses, permits, international or Australian Standards and the Purchaser's policies and procedures of which the Supplier is notified (including all environmental and occupational health and safety requirements).
- 4. WARRANTIES**
 - a. Without limiting any obligations of the Supplier under statute (including, without limitation, the Competition and Consumer Act 2010 (Cth)), the Supplier warrants that the Goods shall be new, of the best quality and workmanship, free from faulty design and Defects, and that the Goods and the Services will be fit for the intended purpose and conform with the Contract requirements.
 - b. If any Defect in the Goods or Services arises within the shorter of:
 - i. 12 months from the date when the Goods are first put into service or completion of the Services; or
 - ii. 24 months from the date of Delivery of the Goods;
the Supplier must, at its own expense, do all things necessary to remedy the Defect and must reimburse the Purchaser for any costs incurred in connection with the Defect, including, without limitation, the cost of the Purchaser remedying the Defect if the Supplier does not do so within a reasonable period following notice of the Defect from the Purchaser.
 - c. The Supplier warrants that it will render the Services with due skill and care and in accordance with industry best practice so that the Services are performed in accordance with the Contract. If the Supplier fails to provide the Services in accordance with this clause 4.c., the Purchaser may have the Services performed by a third party and the costs incurred shall be a debt due from the Supplier to the Purchaser.
 - d. The Purchaser may, at its option, arrange the repair, modification, replacement or resupply of the Goods and Services by a third party or itself, whereby all resulting costs and expenses shall be borne by the Supplier.
 - e. To claim the warranty the Purchaser will write to the Supplier specifying the nature of the defect, breach or non-conformance at the last address specified by the Supplier to the Purchaser for correspondence.
 - f. If the Purchaser makes a warranty claim in accordance with this clause 4, the Supplier will be responsible for all expenses associated with the warranty claim including the cost of returning any defective Goods to Supplier.
- 5. INSPECTION**
 - a. A representative of the Purchaser is entitled to inspect and witness tests the Goods and/or the Services to ensure compliance with the Contract. The Supplier must render reasonable assistance (including allowing the Purchaser access at any time to the Supplier's and any sub-supplier's premises) for this purpose. The Supplier must make this a condition of any subcontract.
 - b. All Goods and Services shall be subject to inspection by the Purchaser within a reasonable time after delivery or performance (as applicable) at the option of the Purchaser irrespective of date of payment.
 - c. A signed delivery docket shall not be construed to mean acceptance by the Purchaser of the Goods and/or Services. The Purchaser will promptly notify the Supplier of any Defects appearing, and in respect of Goods so found to be defective, hold such Goods for the Supplier's instructions and at the Supplier's risk for a reasonable period not exceeding 60 days.
- 6. SUBCONTRACT OR ASSIGNMENT**
 - a. The Supplier must not assign, sub-licence, sub-contract or transfer in whole or in part any of its interest or obligations under the Contract without the Purchaser's prior written consent, which consent may be granted, withheld or granted subject to conditions in the Purchaser's absolute discretion.
 - b. Where the Purchaser grants consent under clause 6.a., such consent shall not relieve the Supplier from its obligations under the Contract. Further, any sub-contractors or agents are equivalently bound by the conditions of this Contract.
- 7. DELIVERY**
 - a. The Supplier is responsible for the delivery of the Goods to, and/or performance of the Services at, the Purchaser's premises or such other location as is specified in the Contract by the Due Date.
 - b. Packages containing Goods must be clearly identifiable and include the Order Number.
 - c. The Supplier must ensure that Goods are suitably packed to avoid damage in transit and/or in storage.
 - d. The date and times for delivery of the Goods or performance of the Services must be confirmed in advance with the Purchaser.
 - e. If the Goods and/or Services are not supplied by the Due Date the Purchaser may, without prejudice to any other rights and remedies, rescind the Contract, unless the delay is caused by factors outside the reasonable control of the Supplier, as determined by the Purchaser.
 - f. The Purchaser shall not be liable to the Supplier in respect of any cost, expense, loss or damage whatsoever incurred or suffered by the Supplier as a direct or indirect result of the rescission of the Contract.
 - g. The Supplier shall be deemed to have delivered the Goods and/or Services only where it obtains a receipt or signed delivery docket, quoting the Purchase Order number, item number and a detailed description of the Goods and Services, from an authorised officer of the Purchaser.
- 8. INVOICE AND DOCUMENTATION**
 - a. All shipments, shipping papers, invoices and correspondence must be identified with the Order Number.
 - b. The Supplier shall, upon completion of the Services or within 30 days of receipt of a Goods delivery docket signed by the Purchaser, forward an invoice in a form satisfactory to the Purchaser to "Accounts Payable" for payment of such of the Price as is due under the Contract. Where the performance of the Contract may exceed 30 days in duration, unless specifically excluded elsewhere in the Contract, invoices may be submitted at the end of each calendar month in which the Contract is performed.
 - c. The Purchaser shall pay such amount of the Price as is due under this Contract within 30 days of receipt of a properly prepared tax invoice. Payment shall be on account only and does not constitute an acknowledgment that the Goods or the Services are free from Defects or otherwise in accordance with the Contract.
 - d. Without limiting the Purchaser's rights under any other provision of the Contract, the Purchaser may deduct from or set off against any monies which may be or thereafter become payable by the Purchaser to the Supplier, including:
 - i. any debt due from the Supplier to the Purchaser; and
 - ii. any claim which the Purchaser may have against the Supplier under or by virtue of any provision of the Contract or otherwise at law or in equity.
- 9. RISK, TITLE AND PROPERTY IN GOODS**
 - a. Title to and property in Goods immediately passes to the Purchaser upon payment or Delivery, whichever occurs first, and the Goods must be appropriately marked and identified as the property of the Purchaser.
 - b. Risk in Goods remains with the Supplier until Delivery to the Purchaser or its agent in accordance with the Contract.
- 10. CONFIDENTIALITY**
 - a. Except as required by law the Supplier shall treat as confidential information which is designated in writing by the Purchaser as confidential or which the Supplier should reasonably have known to be confidential, including (without limitation) any information relating to the contents, operation or performance of the Contract.
 - b. The obligations of this clause survive the expiration or termination of the Contract on any basis.
- 11. TERMINATION**
 - a. The Contract may be terminated:
 - i. at any time by mutual agreement;
 - ii. for the convenience of the Purchaser, upon the giving of 7 days' notice, in which case the Purchaser shall pay the Supplier any direct costs actually and reasonably incurred by the Supplier to the date of the notice of termination;
 - iii. upon a substantial breach of the Contract by either party which is not remediated within a reasonable time (and in any case within 14 days) of notice by the non-breaching party of the substantial breach; or
 - iv. immediately by either party in the event the other party becomes insolvent or financially unable to proceed with the Contract.
 - b. Upon termination of the Contract, the Supplier shall promptly return to the Purchaser the Purchaser's property provided to the Supplier in supplying the Goods or performing the Services.
 - c. If a party breaches (including repudiates) the Contract, nothing in this clause 10 shall prejudice the right of the other party to recover damages or exercise any other right or remedy.
- 12. INSURANCE**
 - a. The Supplier must effect and have in place for the duration of the Contract the following insurances:
 - i. where the Contract includes for supply of Goods:
 1. Product liability insurance for an amount in respect of any one claim or series of claims arising from the one original cause of not less than \$10,000,000;
 2. Insurance of Goods, including while in transit, for the full replacement value of the Goods until Delivery.
 - ii. where the Contract includes for Services to be performed irrespective of where the Services are to be performed:
 1. Public liability insurance for an amount in respect of any one claim or series of claims arising from the one original cause of not less than \$20,000,000;

2. Contract works insurance for the full replacement value of Goods and Services being performed by the Contractor;
 3. Supplier's own property insurance covering equipment and materials owned, hired, leased or used by the Supplier for the purpose of this Contract;
 4. Workers compensation insurance for the maximum amount permitted by law, covering the Supplier's liability under common law and statute for death or injury to any person employed by the Supplier.
- iii. where the Contract includes for professional Services to be performed:
1. Professional Indemnity insurance policy for at least \$5 million for any one occurrence, maintained for not less than six years after the duration of the Contract, unless specifically excluded elsewhere in the Contract.
- c. The Supplier will, at the request of the Purchaser, provide written evidence of all insurances required to be taken out by the Supplier.
- d. The Purchaser shall be noted as an interested party on the Supplier's public liability insurance policy.

13. INDEMNITY

- a. The Supplier shall indemnify and keep the Purchaser indemnified:
- i. from and against all actions, claims, loss, damage, expense or liability expense of any kind incurred by the Purchaser, or damage of any kind suffered by the Purchaser; or
 - ii. personal injury to any person or loss of or damage to any property, arising out of or by reason of anything done or not done by the Supplier in respect of the supply of the Goods and/or Services.
- b. The Supplier shall indemnify the Purchaser in respect of any loss, damage, expense, claim or liability suffered or incurred by the Purchaser as a result of a claim by a third party, including any alleged infringement of any intellectual property right in relation to the Goods and Services provided under this Contract.

14. PROPORTIONAL LIABILITY

- a. To the extent permissible by law the parties agree that the operation of the Civil Liability Act 2002 (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Contract, whether such rights, obligations and liabilities are sought to be enforced as a breach of contract or a claim in tort, or otherwise at law or in equity.

15. SAFETY & ENVIRONMENT

- a. The Supplier must conform to any applicable Government Workplace Health & Safety and Environmental regulations including those administered by Workcover & the EPA.
- b. To the extent that the Contract is for the performance of Services on the Purchaser's premises, whether in conjunction with the supply of Goods or otherwise, this clause will apply. The Supplier must:
- i. ensure that its relevant personnel complete induction training to the reasonable satisfaction of the Purchaser prior to entry on the Purchaser's premises;
 - ii. notify the Purchaser in the event of any accident, injury or property or environmental damage occurring during or in association with the performance of the Services and cooperate fully with any investigation by the Purchaser.
 - iii. Accept that Under the Chain of Responsibility (CoR) laws, if you undertake specified functions that exercise, or have the capability of exercising, control or influence over any transport task, you are part of the chain of responsibility and have an obligation to ensure compliance with the Heavy Vehicle National Law (HVNL) (NSW) (2013 No 42a)

16. INTELLECTUAL PROPERTY

- a. The Supplier warrants that, in relation to the Goods and Services, the design, materials, documents and methods of working shall not infringe any Intellectual Property Right. The Supplier shall indemnify the Purchaser against the infringement of any Intellectual Property Right.
- b. With regard to all Intellectual Property Rights in the Goods or the Services, the Supplier:
- i. (in instances where the Intellectual Property Rights are owned by the Supplier) grants to the Purchaser; or
 - ii. (in instances where the Intellectual Property Rights are not owned by the Supplier) shall ensure the Purchaser is provided with;

(whichever is applicable) an irrevocable, royalty free, non-exclusive, transferable, perpetual licence to exercise all rights of the owner of the Intellectual Property Rights associated with the Goods or the Services, for any business purpose of the Purchaser, including any subsequent repairs, maintenance or servicing, the supply of replacement parts, additions or alterations or entering into any agreement with any third party which is associated with or utilises the Goods or the Services.
- c. This licence arises immediately upon formation of the Contract and survives the termination of the Contract on any basis.

17. NOTICES

- a. A notice (and other documents) must be in writing, legible, in English and delivered in person, by facsimile, by email or by post.
- b. A notice (and other documents) shall be deemed to have been given and received:
- i. if addressed or delivered to the relevant address set out in the Purchase Order or last communicated in writing to the person giving the notice; and
 - ii. on the earliest date of:
 1. actual receipt if delivered in person;
 2. confirmation of correct transmission of fax;
 3. the notice being recorded as having been first received at the electronic mail destination; or
 4. 3 days after posting.

18. GOVERNING LAW

- a. This Contract is governed by and construed with reference to the laws of the State of New South Wales.

19. ENTIRE AGREEMENT AND AMENDMENT

- a. The Contract constitutes the entire agreement between the parties and supersedes all previous negotiations and communications. The Contract may only be varied or modified by written agreement between the Supplier and the Purchaser.

20. WAIVER

- a. Failure by either party to enforce a term of the Contract shall not be construed as in any way affecting the enforceability of that term in any other instance, or the enforceability of the Contract as a whole.

21. VARIATIONS

- a. The Purchaser may give to the Supplier a direction to carry out any variation to the Goods and/or Services and, provided that the variation does not change the general scope of the Goods or the Services, the Supplier must comply with any such direction ("Variation").
- b. The parties must use their best endeavours to agree in writing on the value of a Variation, but in the event that the parties are unable to agree within 7 days of the issue of the direction, then the value of the Variation will be determined by the Purchaser, acting reasonably.

22. DISPUTE RESOLUTION

- a. Any dispute between the parties arising out of or in any way connected with the Contract, which are not resolved by the parties within 7 days, shall be escalated to the party's senior executive for resolution within 14 days after issue of a written notice of the dispute by either party on the other party.
- b. Should resolution not be achieved, it shall be referred for arbitration in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Arbitration Rules. Either party may write to the Institute of Arbitrators and Mediators Australia within 30 days after service of the written notice of the dispute for the appointment of an arbitrator.

23. DEFINITIONS

Contract means the contract comprising the Purchase Order, these Purchase Order General Terms and Conditions and any other document referred to in, or attached to, the Purchase Order.

Defect means any part or aspect of the Goods and/or the Services which is not in compliance with the requirements of the Contract or is otherwise unfit for the intended purpose and includes any Defect which is attributable to design, workmanship or operating characteristics.

Delivery means:

- i. where the Contract includes for Services to be performed on or to Goods supplied by the Supplier, when all of the Services required to be performed on or to the Goods have been completed to the satisfaction of the Purchaser; or
- ii. where the Contract does not include for Services to be performed on Goods supplied, when the Goods have been offloaded from transport and placed in a location agreed with an authorised representative of the Purchaser, to the Purchaser's satisfaction.

Due Date means the due date for Delivery of the Goods and/or completion of the Services as specified in the Purchase Order.

Goods means each and every article or thing described in the Purchase Order (or to be reasonably inferred from the Contract) as to be purchased by the Purchaser, or any part thereof, as adjusted under the Contract and includes (without limitation) any materials or physical objects produced during the supply of the Services.

GST has the meaning given to that term under A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Intellectual Property Right means any patent, registered design, trademark or name, copyright or other protected right.

Order Number means the unique number created and used to identify a Purchase Order.

Price means the "Total Order Value" price, as described in the Purchase Order.

Purchase Order means the document headed as such and describing the Goods and/or the Services to be supplied which may be attached to these Purchase Order General Terms and Conditions.

Purchaser means Lismore City Council (ABN 60080932837) of 43 Oliver Avenue, Goonellabah, NSW, 2480.

Services means the services described in, or reasonably to be inferred from, the Purchase Order, as adjusted under the Contract and includes the performance of all incidental or other services, both delivery or installation of the Goods and the provision of all materials and equipment, necessary to allow or assist the performance of the Services.

Supplier means the person named in the "To:" field (at the top left of the purchase order) as the supplier of the Goods or the Services in the Purchase Order and includes as appropriate the Supplier's affiliates, heirs, executors, administrators, successors and permitted assigns.