

Standard Goods and Services Terms

1 INTERPRETATION

1.1 Interpretation

- (a) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (b) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (c) If the Contractor is two or more persons, they are bound jointly and severally under this Agreement.
- (d) A statute, regulation or provision of a statute or regulation includes:
 - (i) that statute, regulation or provision as amended or re-enacted from time to time;
 - (ii) a statute, regulation or provision enacted in replacement; and
 - (iii) another regulation or other statutory instrument made or issued under that statute, regulation or provision.

1.2 Definitions

In this Agreement, unless the contrary intention is expressed, a term has the meaning given to it by the Agreement Details, or as follows:

Agreement means the following documents (set out in their order or precedence):

- (a) Special Conditions of these Standard Goods and Services Terms;
- (b) Annexures to these Standard Goods and Services Terms; (which includes Tender schedules, if any);
- (c) Any Purchase Order issued by Council to the Contractor; and
- (d) these Standard Goods and Services Terms;
- (e) Conditions of Tender

The Contractor's standard or usual terms and conditions of supply (if any) are expressly excluded.

Approval means any licence, permit, authorisation, consent, determination, accreditation, certificate or other requirement of any Authority.

Authority means any government body (including a statutory corporation), administrative or judicial authority, body or tribunal.

Business Day means any week day on which Council offices are open for business.

Confidential Information means any information disclosed before, or after the date of this Agreement, by a disclosing party to the other party including information which:

- (a) is marked as being proprietary or confidential to the disclosing party; or
- (b) in the circumstances surrounding disclosure, or because of the nature of the information, ought in good faith be treated as confidential.

Contractor's Personnel means the officers, employees, secondees, agents, consultants, contractors and Subcontractors of the Contractor.

Consequential Loss means loss or damage arising from a breach of contract, tort (including negligence), under statute or any other basis in law or equity including, but without limitation, the following: loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, future reputation or publicity and indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the time of execution of this Agreement.

Corporations Act means the *Corporations Act 2001* (Cth).

Deliverables means the goods and services to be provided under the Agreement.

Defects means Deliverables that do not comply with this Agreement and include incomplete Deliverables.

Delivery Location means any person or entity to whom the Contractor subcontracts or assigns any of the Contractor's obligations under this Agreement or is otherwise engaged by the Contractor to provide any Deliverables concerned with the supply of the Goods.

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Deliverables Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in this Agreement.

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Insolvency Event means a:

- (a) party is unable to pay all the party's debts as and when they become due and payable, or the party has failed to comply with a statutory demand or would be deemed to be unable to pay the party's debts if it were a corporation under the *Corporations Act 2001 (Cth)*;
- (b) notice is given of a meeting of creditors with a view to the party entering a deed of company arrangement, or the party enters into a deed of company arrangement with creditors;
- (c) an application is made to a court for the party to be wound up or a winding up order is made against it;
- (d) a controller, administrator or liquidator is appointed, as defined in the Corporations Act; or
- (e) anything having substantially similar effect to any of the events listed above happens.

Insurance Requirements means, unless agreed otherwise in writing,

- (a) Public liability insurance of \$20million for all risks.
- (b) Profession indemnity insurance of \$5Million, except for office based advisory services which is to be cover of \$1Million.

Intellectual Property Rights includes all present and future intellectual and industrial property rights conferred by statute, at civil, common law or in equity including rights such as moral rights, copyright, design, patent, trademark, semiconductor, circuit layout, database rights, trade, business, company or domain name, know how or inventions and processes (whether written or unwritten, registered, unregistered or applied for);

Intervening Event means an event or cause listed below, to the extent that the event or cause is beyond the reasonable control of the relevant party and makes the performance of an obligation under this Agreement impossible and not merely more onerous or uneconomical including:

- (a) act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, or landslide;

- (b) strike, lockout, or other labour difficulty but not a strike or lockout directly involving the party claiming an Intervening Event; or
- (c) act of war, terrorism, sabotage, revolution, riot, insurrection, civil commotion or epidemic.

Laws means laws, ordinances, regulations, by-laws, orders, awards, workplace health and safety codes of practice, and proclamations whether Commonwealth, State or local.

Loss includes damage, loss (including Consequential Loss), cost, claim, liability or expense.

Payment Method means, unless agreed otherwise, monthly invoicing and payment of the amount claimed by the Contractor no later than 20 Business Days after a Valid tax invoice is received.

Personal Information means "personal information", "sensitive information", "health information" or "employee information" as defined by the *Personal Information Protection Act (Tas) 2004*.

Practically Complete means to a standard whereby Works are:

- (a) fit for use and occupation and free from any known Defects;
- (b) the Contractor has provided Council with all required documents necessary to occupy and maintain the Works, including as constructed or installed drawings, plans and surveys and operation and maintenance manuals; and
- (c) the Contractor has vacated the Site and:
 - (i) removed from the Site all construction plant, surplus materials, rubbish and temporary works and installations;
 - (ii) made good any damage as a result of the Works to the surrounding and adjoining areas; and
 - (iii) left the Site, and the existing structures and areas adjacent, in at least as good a state of repair as when the Works commenced.

Purchase Order means the document relates to the Deliverables that is headed as such and incorporates these terms.

Site means the premises, lands, worksite, structures and surrounds where Works must be performed.

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SOP Act means the *Building and Construction Industry Security of Payment Act 2009 (Tas)*.

Subcontractor means any person or entity to whom the Contractor subcontracts or assigns any of the Contractor's obligations under this Agreement or is otherwise engaged by the Contractor to provide any Deliverables concerned with the supply of the Goods.

Tender means the tender, quotation, price written or otherwise, or other offer made by the Contractor and accepted by Council in relation to the Deliverables and their performance and completion.

Term means the time specified by Council in the agreement for the provision of the Deliverables. Unless agreed otherwise, this is not to exceed 5 years.

Valid Tax Invoice means a tax invoice that:

- (a) is valid for the purposes of the GST Act;
- (b) includes the relevant Purchase Order Number;
- (c) contains details of the Deliverables supplied and performed by the Contractor up to the date of the invoice; and
- (d) contains details of the basis for calculation of the amount set out in the invoice with reference to the terms of the Agreement.

Works includes building and construction or civic and civil work or maintenance.

2 PROVISION OF DELIVERABLES

2.1 General Provisions

The Contractor warrants that they will provide Deliverables, for the Term and any Further Term, and further warrants that they will be provided:

- (a) with due care and skill, and to a standard to be expected of a competent person experienced in supplying similar Deliverables;
- (b) in a manner that will not cause any harm, damage or nuisance to the environment.
- (c) in accordance with the Law
- (d) in accordance with Council's reasonable directions and Council's policies notified to the Contractor (which may be reasonably amended from time to time at Council's discretion; and

- (e) otherwise in accordance with the Agreement.

2.2 No exclusivity or minimum volume

Unless agreed otherwise,

- (a) Council is not under any obligation to purchase a minimum volume or level of Deliverables; and
- (b) The Contractor is not the exclusive provider of the Deliverables.

3 CAPACITY, REPORTS AND APPROVALS

The Contractor further warrants that:

- (a) it has entered into this Agreement in its own capacity and not as trustee of a trust;
- (b) it will provide any reports to Council's Representative which Council reasonably requires;
- (c) that the Deliverables do not infringe the rights (including Intellectual Property Rights) of any person; and
- (d) it will obtain and maintain, at its cost, all Approvals necessary for the Contractor to provide the Deliverables in accordance with this Agreement.

4. DELIVERY, TITLE AND RISK IN GOODS

- (a) If the Deliverables are goods the Contractor warrants that:
 - (i) the Contractor is legally entitled to transfer to Council;
 - (ii) they are free from all liens and encumbrances; and
 - (ii) they are new and of merchantable quality.
- (b) Title in, and risk of loss of or damage to, the Deliverables that are goods will only pass to Council once the Deliverables have been:
 - (i) unloaded by the Contractor (and any goods securely stored) at the Delivery Location; and
 - (ii) inspected and accepted by Council in writing.
- (c) The Contractor must provide the Deliverables together with all documents required to transfer title, transfer warranties and other relevant manuals and instructional documents in relation to the Deliverables.

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- (d) The Contractor acknowledges and agrees that the acceptance of any Deliverables by Council under this Agreement does not prejudice any future claim by Council against the Contractor in relation to any Defects where the relevant non-compliant characteristics could not have been reasonably ascertained at the time of acceptance.

5. CONTRACTOR'S PERSONNEL

The Contractor must ensure that all of the Contractor's Personnel who provide the Deliverables:

- (a) comply with the obligations set out in this Agreement;
- (b) have undertaken all necessary training and have obtained (and will maintain) all relevant qualifications, admissions memberships, and accreditations necessary to provide the Deliverables;
- (c) are replaced without any increase to the Contract Sum, if the Council forms the view that any Personnel in providing the Deliverables is incompetent, negligent or guilty of misconduct; and
- (d) are the specified Key Personnel for a particular task.

6. DEFECTS

- (a) If Council is satisfied that the Deliverables are Defects, Council will:
 - (i) notify the Contractor of the reasons for rejection of the Defects; and
 - (ii) not be liable to pay for the Defects.
- (b) If Council rejects any Deliverables as Defects, at the Council's election:
 - (i) the Contractor must collect the Defects;
 - (ii) the Contractor must replace the Defects with compliant Deliverables, within a specified time and without additional cost to Council; or
 - (iii) Council may perform, or have performed, the Deliverables (where they are services).
- (c) The Contractor indemnifies Council against any additional costs incurred by Council in connection with having the Defects performed, returned or resupplied.

7. FURTHER TERM

- (a) Council may extend the Term for the Further Term by providing written notice to the Contractor. Council is under no obligation to extend this Agreement for the Further Term.
- (b) Any such extension will be on the same terms and conditions as set out in this Agreement, with the exception of the deletion of this clause.

8. PAYMENT

- (a) Provided that the Contractor complies with its obligations under this Agreement, Council will pay the Contractor the Contract Sum by the Payment Method.
- (b) Unless otherwise stated in this Agreement, all amounts payable by one party to another party under this Agreement are GST exclusive.
- (c) If GST is imposed or payable on any supply made by a party under this Agreement, the recipient of the supply must also pay any GST liability for that supply at the same time.

9. INTELLECTUAL PROPERTY

- (a) To the extent permissible by law, Council owns any Intellectual Property Rights in any existing material provided by Council, or created in the course of providing the Deliverables.
- (b) Where reasonably required for the performance of the Agreement, each party grants the other party a non-exclusive, irrevocable, royalty-free licence to use any Intellectual Property Rights for the Term.

10. INSURANCE AND RISK

The Contractor must:

- (a) take out and maintain for the Term (and in the case of professional indemnity insurance, for the Term and a period of 6 years after this Agreement ends) the insurance policies stated in the Insurance Requirements;
- (b) must provide certificates of currency for such insurance policies to Council on Council's request; and
- (c) ensure that any Subcontractors are insured to a level commensurate with the Insurance Requirements.

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other party.

11. INDEMNITIES AND LIABILITY

- (a) To the maximum extent permissible by law, the Contractor is liable for and agrees to indemnify and keep indemnified Council, its officers, employees, agents, contractors and consultants against all Loss (including legal costs and expenses on a solicitor/own client basis), arising directly or indirectly from or in connection with any one or more of the following:
 - (i) the breach of any provision of this Agreement by the Contractor, or the Contractor's Personnel;
 - (ii) any negligence of the Contractor, or the Contractor's Personnel in respect of this Agreement; or
 - (iii) any liability of the Contractor or the Contractor's Personnel to pay any tax, duty, levy, impost or other charge arising in relation to the supply or provision of the Services, except to the extent that any loss, liability or claim is caused by Council.
- (b) Neither party is liable to the other party for Consequential Loss.

12. INTERVENING EVENT

- (a) Neither party is liable to the other for any failure to perform an obligation under this Agreement caused by an Intervening Event.
- (b) Where an Intervening Event occurs, the party claiming it must:
 - (i) notify the other party immediately and provide details of the Intervening Event; and
 - (ii) within a reasonable time after the giving of notification referred to above, notify the other party of any methods or procedures known to it to circumvent the Intervening Event.
- (c) Where an Intervening Event ceases, the parties must immediately recommence performing the duties that were previously affected by the Intervening Event.
- (d) Where an Intervening Event continues for a period of 20 Business Days, either party may terminate this Agreement by giving at least 10 Business Days' written notice to the

13. TERMINATION

13.1 Termination for convenience

- (a) Council may terminate this Agreement, without the need to show cause, by giving at least 20 Business Days' written notice to the Contractor. The termination will be effective from the date stated in the notice.
- (b) The Contractor's only remedy for this termination is payment for the provision of Deliverables in accordance with this Agreement, up to and including the date of termination.

13.2 Termination for Default

- (a) Council may terminate this Agreement by giving the Contractor notice, immediately if:
 - (i) if the Contractor refuses to perform its obligations under this Agreement;
 - (ii) the Contractor breaches this Agreement and does not remedy it within 14 days after Council gives the Contractor notice to remedy the breach; or
 - (iii) an Insolvency Event occurs in respect of the Contractor.

13.3 General obligations after termination

Upon termination of this Agreement for any reason the Contractor will surrender material subject to Council's Intellectual Property Rights.

13.4 Reduction of Services

- (a) The Council may reduce, or suspend, the Supply of Deliverables provided under the Agreement:
 - (i) As an alternative to exercising the right of termination of the Agreement; or
 - (ii) At its absolute discretion where no written term or end date has been provided for that occurrence of the service.
- (b) Council's liability to pay any amounts under this Agreement will reduce in proportion to the fees and charges ordinarily applicable to that returned goods, or ceased Services. The Customer will have no other liability to the Supplier relating to the suspension.
- (c) The Council may end the suspension on written notice. Then the Supplier must recommence performance as soon as

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reasonably practicable.

- (d) The ending of a period of suspension may be conditional on the Contractor:
 - (i) removing or replacing any Key Personnel;
 - (ii) undertaking to take action related to rectification of breaches of the Agreement.

13.5 Consequences

Termination or suspension of the Contract will not affect the accrued rights and remedies of the parties prior to termination or suspension.

14. WORKPLACE HEALTH AND SAFETY

The Contractor must:

- (a) ensure that all of its employees, subcontractors and agents, while on the Council owned or controlled premises, or while performing the Deliverables:
 - (i) carry out the Works safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) comply with all Legislative Requirements in respect of work health and safety, including any relevant codes of practice approved under the Legislative Requirements;
- (b) The Contractor must:
 - (i) comply with its duty under any applicable Legislative Requirements to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter.;
 - (ii) promptly notify Council of any security breaches, accident, property or environmental damage or notifiable incident pursuant to any applicable Laws in relation to workplace health and safety, which occur during the course of supplying or performing the Deliverables;
 - (iii) not do anything which may place Council in breach of any applicable workplace health and safety Laws; and
 - (iv) provide to Council all things necessary to enable Council to conduct any safety audit or investigation.

15. ASSIGNMENT AND SUB-CONTRACTING

- (a) Neither party may assign or subcontract any

of their obligations under this Agreement without the prior written consent of the other party.

- (b) The Contractor remains responsible for the supply of the Deliverables and the performance of the Deliverables despite the fact that the Contractor may have subcontracted or assigned any part of its obligations under this Agreement.

16. CONFIDENTIALITY

The Contractor must keep all Confidential Information confidential and must not disclose any Confidential Information of Council given or received in connection with this Agreement to any other party. Except for information which is,

- (a) or becomes a part of the public domain otherwise than by a breach of this clause;
- (b) required to be disclosed pursuant to any Law; or
- (c) disclosed to the Contractor's Personnel to enable the Contractor to fulfil its obligations under this Agreement. The Contractor must ensure that the Contractor's Personnel undertakes to be bound by the obligations in this Agreement. Council may require the Contractor's Personnel to sign a confidentiality undertaking to confirm this.

17. PRIVACY

- (a) The Contractor agrees to comply with privacy-related Law including;
 - (i) to use Personal Information only for the purposes of this Agreement; and
 - (ii) not to disclose Personal Information without the written authority of Council.
- (b) Any Contractor collecting, using or storing Personal Information:
 - (i) must present to the Council a data privacy and breach plan in a form acceptable to Council, and comply with that plan;
 - (ii) undertakes to voluntarily notify the Council and the Office of the Australian Information Commissioner (or its successor) of a breach;
 - (iii) must actively cooperate with council in notifying those affected by a privacy breach, including answering technical enquiries about protective actions affected people might take; and undertakes not to rely on

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exemptions, such as the minimum turnover requirements in privacy laws, to avoid notifying, or responding to privacy breaches.

18. SYSTEM SECURITY

18.1 General Obligations

Where the Deliverables relate to the provision of software services, hosting of Council data, receiving Personal Information, or making a network link to a Council computer system, the Contractor must:

- (a) participate in periodic systems security audits conducted by the Council to ensure ongoing compliance;
- (b) act promptly to rectify any system security vulnerabilities identified during audits, or other processes;
- (c) promptly take steps to protect and secure websites and computer systems following a security breach;
- (d) actively cooperate with council to manage the consequences of a security breach, including to minimise damage to the Council's reputation with its stakeholders;
- (e) take other systems security measures reasonably specified by Council from time to time.

18.2 System security standards

- (a) The contractor is required to demonstrate that they are certified to ISO 27001 standard or an equivalent standard acceptable to Council, or
- (b) present to the Council a systems security plan in a form acceptable to Council. The Contractor must comply with any approved systems security plan.

18.3 Content of the System security plan

Any system security plan must provide for at least:

- (a) installing software patches that are designated "critical" by the software vendor within 5 days of release; installing software patches that are designated "non critical" by the software vendor within 21 days of release;
- (b) conduct yearly penetration and vulnerabilities testing, and the provision of results are then to be provided to Council;

- (c) participate in Council monthly scans of relevant systems, and respond to the Council's findings by taking reasonable steps to rectify any security vulnerability;
- (d) store sensitive information encrypted at rest or in transit;
- (e) if providing for remote access to systems, have Multifactor Authentication safeguards;
- (f) run up-to-date firewall and anti-virus software as recommended by Council, or software vendor recommendations;
- (g) any other matter required by Council.

19 CONFLICT OF INTEREST

The Contractor must immediately notify Council of the existence or likelihood of a conflict of interest as soon as it becomes apparent to the Contractor and cooperate with Council to resolve such conflict of interest.

20 DISPUTES

- (a) The aggrieved party must notify the other party in writing of the specific details of any formal dispute. The notice is to specify the details of the dispute and request a meeting of the other party's representatives.
- (b) Within 5 Business Days of such a notice, representatives of the parties, being persons who have the authority to settle the dispute, must meet and use their best endeavours to resolve the dispute within a further 10 Business Days.
- (c) Neither party is to commence litigation against the other party while such a dispute meeting is being progressed within the time limits specified in this Agreement.
- (d) The Contractor agrees to follow the dispute resolution procedure in this clause and not directly or indirectly approach the Council's councillors in relation to the dispute.
- (e) Unless agreed otherwise, each party is to continue to perform their obligations under this Agreement, notwithstanding the existence of a dispute or complaint.
- (f) Nothing in this clause prevents either party from seeking urgent interlocutory relief, or terminating this Agreement in accordance with any rights held under the Agreement.

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GENERAL

- (a) An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- (b) A notice or other communication to be given or made under this Agreement must be in writing and addressed to the representative of each of the parties at the address or email address (as the case may require) outlined in the Agreement Details, or as notified from time to time.
- (c) Each party must do all things reasonably necessary to give effect to this Agreement.
- (d) The failure of a party at any time to require full or partial performance of any provision of this Agreement does not affect in any way the full right of that party to require that performance subsequently.
- (e) If any provision or part of any provision of this Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from this Agreement and this does not affect the validity, operation or enforceability of any other provision of this Agreement, unless the severance would change the underlying principal commercial purpose or effect of this Agreement.
- (f) Clauses 9 (Intellectual Property), 10 (Insurance), 11 (Indemnities), 13 (Termination), and 16 (confidentiality), survive the expiry or early termination of this Agreement.
- (g) The parties acknowledge and agree that this Agreement and the performance of this Agreement does not represent or imply a partnership, agency, fiduciary relationship, employment relationship, joint venture, distribution or any other category of commercial or personal relationship.
- (h) The Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements, negotiations and understandings between the parties in relation to its subject matter.

- (i) This Agreement is governed by the laws of Tasmania, and the parties submit to the exclusive jurisdiction of

the courts of Tasmania.

- (j) An offer may be made by the Contractor, and accepted by the Council, by electronic means. For the avoidance of doubt, the Agreement does not need to be manually signed by either party to be legally binding.

SPECIAL CONDITIONS FOR IT CONTRACTS

Where the Deliverables include the supply of software products and other information technology (IT) based services, then the following Special Conditions apply.

SC1. Security

The contractor is required to:

- (a) promptly take steps to protect and secure websites and computer systems. Such measures include:
 - (i) installing software patches that are designated “critical” by the software vendor within 5 days of release;
 - (ii) installing software patches that are designated “non critical” by the software vendor within 21 days of release;
 - (iii) conducting yearly penetration testing and vulnerabilities report provide the results to Council;
 - (iv) participating in Council monthly scans of relevant systems;
 - (v) storing sensitive information encrypted at REST;
 - (vi) if providing for remote access to systems, have Multifactor Authentication safeguards;
 - (vii) running up-to-date firewall and anti-virus software;
 - (viii) participating in monthly Council
 - (ix) taking other systems security measures reasonably specified by Council from time to time.
- (b) either,
 - (i) demonstrate that they are certified to ISO 27001 standard or an equivalent standard acceptable to Council; or
 - (ii) present to the Council a systems security plan in a form acceptable to Council, and comply with that plan.

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SC2. Testing,

- (a) The Contractor will develop, install and test the Deliverables with minimum disruption to the normal use and occupancy of the Site.
- (b) The Council may specify additional tests to be carried out following rectification action in respect of any Defects or system underperformance.

SC3 Licences and Updates

- (a) The Contractor will provide at no additional charge any licenses, authorisations, updates, new releases, or other support services required by the Agreement or usually provided to customers of that product.
- (b) Where the Council acquires other systems to vary, replace or add to the Council's existing systems that are serviced or managed by the Contractor, then the Contractor will provide reasonable assistance to the Council to effect the systems interface/cutover.
- (c) If requested the Contractor must provide a Project Plan acceptable to Council. The Contractor must comply with the approved Project Plan.

SC.4 Outage and Fault Handling

The Contractor is to submit an outage and fault handling procedure for approval. If no procedure is not provided or approved within a reasonable time, the Council may prescribe a procedure. The contractor is comply with an approved procedure.

SPECIAL CONDITIONS FOR WORKS

Where the Deliverables include Works then the following Special Conditions apply.

SC5. Complete Contract

- (a) The Contractor must provide everything necessary for the completion of the Works.
- (b) The Contract Sum includes the removal and disposal of the existing materials.
- (c) If the Purchase Order does not specify the standard of materials or workmanship required, the Contractor must use new materials and appropriate standards that produce Works that are fit for purpose.
- (d) Everything in the knowledge of the Contractor's representative is deemed to be within in the Contractor's knowledge.
- (e) Unless otherwise agreed in writing prior to the Works commencing on Site, the Contractor will be

deemed to have allowed sufficiently for the ground and site conditions.

SC6. Execution of the Works

- (a) The Contractor must execute the Works in accordance with:
 - (i) any specifications, plans, drawings, instructions or other description(s) of the Council's requirements that are attached to, referenced or issued with this Purchase Order; and
 - (ii) any prior written representations made by the Contractor as to the extent, manner of performance and quality of the Works.
- (b) The Contractor is responsible for caring for the Works and must safeguard the Works and the Site until such time as the Works are completed.
- (c) If the Contractor does not personally execute and supervise the Works, the Contractor must ensure that they are supervised and managed by a competent and experienced Contractor's representative.
- (d) The Contractor, its representative, employees and subcontractors must hold any occupational and other licenses and accreditations required by any Legislative Requirement.
- (e) The Contractor must take reasonable steps to protect people and property and avoid obstructing other uses of the site.
- (f) The Council will give the Contractor enough access to the Site for the Contractor to commence and carry out the Works specified in the Purchase Order. Unless agreed otherwise, the dates and times for working on site will be as directed in writing by the Council. The Council may access and inspect the Site even while Works are being performed.

SC7 Commencement and Completion of Works

- (a) The Contractor must commence Works by no later than the date stated in the Purchase Order or, if no date is stated in the Purchase Order, within 14 calendar days of the date of the Purchase Order.
- (b) The Contractor must complete the entirety of the Works to a standard which is Practically Complete:
 - (i) by no later than the date or within the time or times required by the Purchase Order; or
 - (ii) if no dates or times are required by the Purchase Order, by the date or within the

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time or times represented by the Contractor to Council in the accepted Tender.

- (c) If the Works are not Practically Complete by 4.00pm on the required day then Council may, for every day which the Works remain uncompleted after the required date, apply the amount of liquidated damages:
 - (i) specified in the Purchase Order; or
 - (ii) otherwise notified to the Contractor in writing by Council prior to the Purchase Order being issued to the Contractor.
- (d) The Contractor must provide Council 14 days notice of the Works approaching a stage where they are Practically Complete. Within 14 days of the Contractor's notice, Council will identify any Defects in the Works by giving the Contractor a written notice. If Council does not issue a written notice identifying any Defects in the Works within 14 days, the Works are deemed Practically Complete.
- (e) The Contractor must rectify any Defects in the Works identified in a notice under paragraph (e) of this Special Condition within the time directed by Council, or if no time is directed within 14 days from the date of Council's notice. If the Contractor fails to rectify the Defects within the required time, Council may have them rectified by others and recover the costs incurred by it in doing so as a debt due and payable to Council by the Contractor.

SC8 Extension of time to complete Works

- (a) Council may extend the date or amount of time by or within which the Works must be Practically Complete. Council is not obliged to extend the date or amount of time at the request or for the convenience of the Contractor.
- (b) Council must extend the date or amount of time by or within which the Works must be Practically Complete by a reasonable period if the progress of the Works is delayed because of:
 - (i) any fault on the part of the Council or any employee, agent or consultant of Council;
 - (ii) industrial conditions, but excluding any industrial conditions occurring after the Works are Practically Complete;
 - (iii) inclement weather, but excluding any industrial conditions occurring after the Works are Practically Complete;
 - (iv) preclusion of access to the site not caused by the Contractor; or

- (v) suspension of the Works by or on behalf of Council to the extent that the suspension is unrelated to any negligence, act or omission by the Contractor or any Contractor's Personnel.

- (c) Council must also extend the Date for Practical Completion by a reasonable period if the progress of the Works is delayed because of any variation to the Works in accordance with Special Condition SC10.

SC9 Suspension of Works

- (a) Council may direct the Contractor to suspend carrying out all or part of the Works and the conditions on which work is to recommence.
- (b) If a direction under this Special Condition SC9 causes the Contractor to incur more or less cost than would have been the case other than for the direction, the difference will be added to or deducted from the Contract Sum.
- (c) Paragraph (b) of this Special Condition applies to the extent that the suspension was not due to any negligence, act or omission by the Contractor or any Contractor's Personnel.

SC10 Variations

The Contractor must not make any changes to the Works unless the Council has given the Contractor a written direction requiring that action. The Contractor must, within 10 Business Days, provide the Council with an itemised variation quotation for the cost of performing the direction, or it must carry out the Work for the direction at no additional cost.

SPECIAL CONDITIONS FOR STANDING OFFERS

Where the Deliverables include standing offers and other contracts that do not oblige the Contractor to provide Deliverables until a Purchase Order is issued then the following special conditions apply:

SC11. Ordering Deliverables by Purchase Order

- (a) Each Order issued will constitute a separate contract (and occasion of supply) for supply of the Deliverables specified in the Order.
- (b) The Deliverables supplied under an Order must conform to the Order and be consistent with the products offered in the Agreement; and
- (c) If there is no agreed applicable schedule of rates for the type of Deliverables, the provision of the Deliverables by the Contractor is not agreed until the total contract sum and rates for those Deliverables have been agreed in writing by the

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SC.12 If the Deliverables were procured by Tender

- (a) The Purchase Order Terms and Conditions current two weeks prior to the closing time of the Tender will apply to each occasion of supply.

SPECIAL CONDITIONS FOR EQUIPMENT HIRE

Where the Deliverables include the hiring of equipment, then the following Special Conditions apply

SC 13. General Provisions

The Contractor warrants that:

- (a) the Council is legally entitled to keep and use the equipment for its business purposes in accordance with the Agreement;
- (b) that the Contractor's Personnel operating the Equipment included are, or will be by the commencement of the Hire Period, properly qualified, skilled, trained, equipped, fit for work, inducted and supervised.
- (c) the equipment is free from all liens and encumbrances, is in good repair and is fit for the intended use; and
- (d) the Equipment is in good serviceable condition when supplied and that this is evidenced by photographs or other evidence, such as a condition report countersigned by the Council. The Council is not liable for alleged damage to, or deterioration of Equipment, if this changed condition is not evidenced by a countersigned condition report;
- (e) that maintenance support is provided, or where that is not part of the Deliverables, that the Council has sufficient information and instruction to carry out required maintenance.

SC.14 Title in the Equipment and Relationship of the parties

The parties acknowledge and agree that this Agreement and the performance of this Agreement does not:

- (a) create any Council ownership interest in the Equipment; or
- (b) represent or imply a partnership, agency, fiduciary relationship, employment relationship, joint venture, distribution or any other category of commercial or personal relationship.

SC.15 Council's warranties

The Council will:

- (a) operate the Equipment in accordance with the Contractor's reasonable instructions and this Agreement;
- (b) take reasonable steps to secure the Equipment from theft or malicious damage when not in use; and
- (c) return the Equipment to the Contractor in a similar condition to when the Council received it, fair wear and tear excluded.

SC16 DELIVERY

Unless agreed otherwise in writing, the Contractor must:

- (a) provide and unload the Equipment at the Delivery Location together with all agreed Consumables;
- (b) provide any related ancillary items, information and training reasonably required to operate the Equipment safely, including relevant basic operational procedures training, condition reports signed by both parties, personal protective gear, safety management plans, manuals and instructional documents; and
- (c) support the Services during the Term and any warranty period. If a Service is no longer available or cannot be fully supported as required by the Agreement, then the Contractor must, at their own cost, provide a fit for purpose substitute that is able to comply with the obligations of this Agreement;

SC. 17 DEFECTIVE EQUIPMENT

- (a) If Council is satisfied, acting reasonably, that the Equipment is Defective, Council will:
- (i) notify the Contractor of the reasons; and
- (ii) not be liable to pay for the Defective Equipment from the date that it became Defective Equipment.
- (b) If Council notifies that any Equipment is Defective Equipment, at the Council's election:
- (i) the Contractor must collect the Equipment
- (ii) the Contractor must repair or replace that Equipment with compliant Equipment, within a specified time; or
- (iii) If no action is taken within the time specified in the notice, the Council may have Equipment repaired, or resupplied by a third party.
- (c) The Contractor indemnifies Council against any additional costs incurred by Council in connection with having the Defective Equipment repaired,

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replaced, returned or resupplied. The Council may recover any of these costs as a debt against the Contractor or offset them from moneys owed to the Contractor.

SPECIAL CONDITIONS FOR PROFESSIONAL SERVICES

Where the Deliverables include professional services, then the following Special Conditions apply:

SC. 18 Professional Services

- (a) The Council may extend the Term on the same terms and conditions by giving the Contractor written notice before expiry of the then current Order.
- (b) The Contractor must supply the Deliverables during the Business Day or as otherwise specified in the Order.

SPECIAL CONDITIONS FOR SECURITY OF PAYMENTS

Where the provision of the Deliverables involves a claim in respect of building and construction work or building or construction-related goods and services under the SOP Act then the following Special Conditions apply.

SC 19 SECURITY OF PAYMENT

- (a) The Contractor must ensure that within 24 hours after any notice under the SOP Act (other than a payment claim or payment schedule) being given or received by the Contractor, or any subcontractor, a copy of that notice is given to the Council.
- (b) Unless the Purchase Order specifies otherwise, the Contractor must claim payment progressively on the last day of each month. An early payment claim will be deemed to have been made on the date for making that claim.
- (c) Each payment claim must be given in writing to the Council and will include details of the value of the work, goods or services (as the case may be).
- (d) The Council will, within the time required by the SOP Act after receiving a payment claim, assess the claim and issue a payment schedule stating the moneys due to the Contractor or the Council, as the case may be.
- (e) The Council will set out in the payment schedule the calculations employed to arrive at the amount certified and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference.

- (f) If Council does not issue a payment schedule within the time required by the SOP Act, the payment claim is taken as accepted by Council for payment in full.
- (g) Within 30 days after receipt by the Council of a payment claim, the Council or the Contractor, as the case may be, will pay:
 - (i) the amount certified, if the Council has issued a progress schedule with respect to the payment claim; or
 - (ii) the amount of the payment claim, if the Council has not issued a payment schedule.
- (h) Interest in the amount adjudicated under the SOP Act or 10% per annum will be due and payable after the date of default in payment.