**TERMS & CONDITIONS**

**Goods**

1. **CONTRACT**

These conditions together with any specifications provided by the Council in connection with the supply of the goods or materials (“the Specification”) and the attached order shall constitute the Contract Documents and the entire terms of the agreement.

1. **THE GENERAL SCOPE OF CONTRACT**

This contract requires the Supplier to:

* 1. supply goods or materials (“the Goods”) as nominated as to sizes, quantities and types;
	2. ensure that the Goods delivered comply with the quality size and nature specified in the Contract Documents;
	3. supply the same for the amount or at the rates of charge referred to in the attached order;
	4. comply in all respects with the Contract Documents concerning the sale, supply and delivery of the Goods.
1. **QUALITY**

The quality of the Goods delivered shall not differ from that specified in the Contract Documents unless the change in quality is ordered by the Council in a written form specifically referring to the amendment of the quality.

1. **STATUTORY REQUIREMENTS**

The Supplier shall ensure that its supply and delivery of the Goods satisfies all of the requirements of all relevant Acts of Parliament and all ordinances, regulations, by-laws, orders and proclamations made or issued thereunder applicable to the sale, supply or delivery of the Goods and, where necessary, secure all necessary approvals and pay all fees incurred in connection with the sale, supply or delivery thereof to the Council.

1. **DELIVERY**
	1. The Supplier must deliver the Goods on or before the delivery date
	2. Delivery shall be made to such locations and at such times as shall be nominated by the Council in the attached order.
	3. Upon delivery the Goods shall be accompanied by a delivery document with the Council’s order number nominated thereon. A separate invoice shall be delivered to the Council within three (3) days of delivery which shall state clearly the contents of delivery.
	4. The Price shall be inclusive of all freight insurance and other charges in or in connection with the forwarding of the Goods to the Council.
	5. There is no liability to pay for any Goods until delivery.
	6. All elements of the Goods delivered by the Supplier shall be at the risk of the Supplier and no liability to pay for them shall arise until that element of the Goods are approved by the Council and delivery is accepted in writing or by counter- signature.
	7. Where any part of entire payment for any element of the Goods is made by the Council the entire title of the property shall pass without exclusion or limitation but subject to the Council’s right to subsequent rejection in the event that the relevant element of the Goods is discovered to not comply with the terms of this Contract, the Specification or the relevant order.
	8. Where the Council has accepted an element of the materials that constitute part of a “Materials Request” the Council shall pay the Supplier that part of the purchase price attributable to that element of the Materials accepted.
	9. Upon return of any such element of the Goods which is not acceptable to the Council the Supplier shall reimburse the Council for:
		1. any amounts paid by the Council on account for the price of the returned elements of the Goods; and
		2. any costs incurred by the Council in connection with the delivery or return of the relevant element of the returned Goods.
2. **TERMS OF PAYMENT**

Unless otherwise specified in the Payment Terms, the Council must pay the price specified in the Purchase Order by cheque or electronic funds transfer within 30 days of the end of the month in which the invoice is issued by the Supplier. The invoice cannot the issued until after the delivery of the Goods.

1. **ACCEPTANCE OF GOODS**

The Council shall only be obliged to accept delivery of such Goods as comply with the Contract Documents and if the delivery of the Goods shall not comply with all of the same in any respect then the Supplier shall, if so required by the Council, remove all such rejected elements of the Goods and replace the same with a delivery of the Goods acceptable to the Council.

All freight, insurance and other charges whatsoever in connection with the return of that element of the Goods wrongly supplied and delivery of a further supply of the Goods shall be paid and borne by the Supplier.

1. **SAMPLES**

The Council may require, as a condition of delivery of any element of the Goods, the Supplier to supply a sample of the relevant Goods for approval by the Council. In the event that such a sample is produced and approved, then any delivery of that element of the Goods which is referrable to sample shall be of a size and nature and quality consistent with that of the approved sample.

1. **WARRANTY**

The Supplier warrants that all of the Goods delivered to Council:

* 1. will conform to the relevant description and specifications of the same contained in the Contract Documents;
	2. shall be of good merchantable quality and for the know purpose for which it is sold;
	3. and new (unless otherwise specified in writing);
	4. throughout the warranty period, operate in accordance with the Specifications, and otherwise in accordance with the operation of similar products;
	5. shall be delivered by the due delivery date specified on the attached order.
	6. If any Goods are found to be defective or non-compliant and the Council notifies the Supplier of the defect during the warranty period, the Supplier must, at its own cost, promptly replace the Goods and deliver them to the Council. Failing rectification by the Supplier, the Council may rectify defects at the cost of the Supplier

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1. **VARIATIONS AND EXTENSIONS OF TIME**
	1. Variations
		1. The Supplier must not, and is not authorised to make any Variation of the Goods except a Variation instructed by Council and/or a Variation requested by the Supplier which has been approved by Council.
		2. Variations by the Supplier arising from, or related or attributable to the existing conditions which were, or ought to have been, reasonably foreseen as at the date of receipt of a Purchase Order from the Council are not permitted.
		3. A Variation must be valued as soon as practicable, and the Supplier must promptly and diligently supply to the Council all relevant information to the valuation.
	2. Adjustment of Price
		1. If practicable, the value of the Variation must be agreed by the Supplier and the Council before the Supplier commences to execute the Variation or,
		2. If the value of the Variation is not agreed by the Supplier and the Council, the value must be determined by the Council by application of rates accepted by the Council.
	3. Extension of Time
		1. The Supplier by written notice to the Council may claim a time extension if delivery of the Goods is delayed or will be delayed by an event arising from, or related or attributable to existing conditions, but which were not, and could not have been reasonably foreseen as the date of receipt of a Purchase Order from Council
		2. The claim must state with reasonable particularity the cause of the delay, and an estimate (if practicable) of the extent or likely extent of the delay in delivering the Goods
		3. The claim must be made before or within seven days after the commencement of the delay, whether or not it is practicable to estimate the delay or its consequences
		4. If delivery of the Goods is delayed by a cause beyond the control of the Supplier, the Supplier is entitled to a fair and reasonable extension of time for delivering the Goods
		5. For the avoidance of doubt, the Supplier is not entitled to an extension of time for any delays or disruptions arising from the existing conditions which were, or ought to have been, reasonably foreseeable at the date of receipt of a Purchase Order from the Council.
		6. The Supplier accepts the risk of all costs, losses and expenses incurred because of a delay in delivery of the Goods (including a delay caused by a Variation directed by the Council). The Supplier’s sole remedy for such a delay is an extension of time approved by the Council. No costs or damages are payable by the Council in respect of such a delay.
2. **INSURANCE**

The Supplier must maintain at all times, the Supplier’s Insurances for at least the cover specified in the Purchase Order

* 1. The Supplier must maintain the Supplier’s Insurances for at least 12 months following delivery of the Goods unless otherwise specified in the Purchase Order
	2. The Supplier must provide certificates of currency in respect of the Supplier’s Insurances when reasonably requested by the Council.
	3. The Supplier must comply with the *Work Health and Safety Act 2012* (SA), any regulations made under it and any associated policies adopted by the Council
1. **SUPPLIER INDEMNITIES**

The Supplier must indemnify the Council against all actions, proceedings, claims, demands, charges, penalties, expenses and all other liabilities arising from or in relation to the performance or non-performance of any of the Supplier’s obligations under this agreement. This indemnity is reduced by the extent to which the Council contributes to the event giving rise to the claim for the indemnity**.**

1. **FORCE MAJEURE**

Force Majeure Event means an unforeseeable and unknown event occurring after the date of this agreement beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

* + 1. Acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disasters; and
		2. Acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
		3. A pandemic is declared by a Governmental Agency and measures are implemented by the Governmental Agency to address the pandemic; and/or
		4. A suspension or termination of services or work is necessitated by legislative requirement or is ordered by a Governmental Agency

13.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:

* + 1. neither party is liable for such delay or failure; and
		2. all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply
		3. a party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
		4. notify the other party as soon as possible giving;
			- 1. reasonably full particulars of the Force Majeure Event;
				2. the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
				3. where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
		5. Use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
		6. Resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
		7. Notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance and
		8. Notify the other party when resumption of performance occurs
	1. If a delay or failure under this clause exceeds 60 days, the Council may immediately terminate this arrangement by written notice to the Supplier
	2. In the event of the Council terminating this agreement:
		1. the Council remains liable to pay the Supplier any unpaid invoice already issued by the Supplier and;
		2. within twenty (20) Business Days of the Termination Date, the Council may immediately terminate this agreement by written notice to the Supplier
		3. for Goods supplied up to and including the Termination Date and not the subject of a prior invoice; and
		4. for reasonable and substantial direct costs or expenses (net of GST input tax credits) the Supplier incurred as the result of the Council terminating the Council terminating the agreement and not reasonably able of being put to alternate use
	3. The Council will not otherwise be liable to the Supplier for any cost, loss, expenses or damage incurred by the Supplier in connection with the exercise by the Council of its rights under 13.3 including, without limitation, any claim relating to loss of anticipated profits or unsupplied Goods
1. **TERMINATION**
	1. The Council may immediately terminate this agreement by giving notice to the Supplier if the Supplier:
		1. ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement;
		2. breaches a material provision of this agreement and fails to remedy the breach within a specified reasonable time after receiving notice requiring it to do so;
		3. becomes an externally-administered body corporate or an insolvent under administration or becomes insolvent (each within the meaning of the *Corporations Act 2001*)
	2. Termination of this agreement under this clause does not affect any accrued rights or remedies of either party
2. **AUDIT**

The Supplier must keep the Council fully and regularly informed as to all matters relating to the Goods and must provide to the Council any information reasonably requested by Council for the purposes of monitoring the performance of the Supplier’s obligations under this agreement.

1. **DISPUTES**

All disputes or differences between the Council and the Supplier must be referred to an arbitrator, agreed by the parties or in the absence of agreement appointed by the President of the Local Government Association of South Australia.

1. **NOTICES**
	1. A notice, demand consent, approval or communication under this agreement (Notice) must be:
		1. in writing, in English and signed by a person authorized by the sender; and;
		2. hand-delivered or sent by pre-paid post or facsimile or electronic communication to the recipient’s address or facsimile number specified on the Purchase Order, as varied by any Notice given by the recipient to the sender

1. **GST PROVISIONS**
	1. The total amounts payable under this agreement are inclusive of GST, if applicable.
	2. Notwithstanding any other provision of this agreement, the Council need not make any payment for a taxable supply made by the Supplier under this agreement until the Supplier has given the Council a tax invoice in respect to that taxable supply.