**TERMS & CONDITIONS**

**Services**

1. **CONTRACT**

“Contract” means:

* 1. where this Purchase Order is issued to the Contractor under a Local Government Services Contract (“Contract”) then the general conditions and any specifications contained in the Contract together with the attached order shall constitute the contract documents and the entire terms of the agreement.
	2. in any other case, the terms and conditions contained herein together with any specifications and the attached order shall constitute the contract documents and the entire terms of the agreement.
1. **INTELLECTUAL PROPERTY**

Means all rights conferred by statute, common law or equity in relation to patents, inventions, registered and unregistered designs, registered and unregistered trade marks, trade names, logos and get up, confidential information, copyright and moral rights and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

* 1. Other than any drawings or specifications provided by the Council to the Contractor, the Contractor warrants that the Services will not infringe the Intellectual Property of any third party
	2. The ownership of Intellectual Property produced as a result of this agreement rests solely in the Council immediately on its creation
	3. The Contractor is granted a royalty-free, non-transferable, non-exclusive license to use any Intellectual Property:

 2.3.1 produced as a result of this agreement; or

2.3.2 relating to the drawings and specifications or the confidential information provided by the Council to the Contractor;

 Solely for the purpose of completing the Services and for no other purpose.

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1. **SERVICES**

 “Services” means all Services and/or Services specified in the Services Order together with any additional Services and/or services necessary for the performance of this agreement.

1. **SUPPLY**

 The Contractor agrees to supply the Services and the Council agrees to purchase the Services on the terms of this agreement.

1. **SERVICE STANDARDS**

The Contractor must:

* 1. Perform the Services in a professional and competent manner with due care, skill and diligence and within the time specified in the Purchase Order.
	2. Comply fully and promptly at its own cost with all laws, applicable standards, codes of practice, by-laws, orders and regulations at present or in the future relating to the performance of the Services and with all requirements, notices or orders in respect of anything affected by the Services;
	3. Provide at its own cost all supervision, labour, materials plant, tools and equipment, transport and temporary Services required for the performance of the Services
	4. Be responsible for the care of the Services from the date of commencement until completion, including the care, storage and protection of unfixed items and items provided by the Council (if any); and
	5. Provide, erect and maintain all barricades, fences, signs, lighting and temporary Services necessary for the protection of the Services, other property and for the safety and convenience of the public
1. **WARRANTY**

6.1 The Contractor warrants that the Services will:

 6.1.1 be of good merchantable quality and fit for their purpose;

6.1.2 be performed using new materials, unless otherwise notified in writing by the Contractor;

6.1.3 conform with the description and the specifications in the Purchase Order; and

6.1.4 throughout the warranty period, operate in accordance with the specifications, and otherwise in accordance with the operation of similar products

* 1. If any Services are found to be defective or do not comply with 6.1.1 to 6.1.4 and the Council notifies the Contractor of the defect during the warranty period, the Contractor must, at its own cost, promptly rectify any defects in the Services within the warranty response time
	2. Failing rectification by the Contractor during the warranty response time, the Council may rectify defects at the cost of the Contractor;
	3. The Contractor:
		1. warrants to the Council that it has entered into this agreement with full knowledge of existing conditions, has not relied on any advice or statements by the Council regarding the existing conditions and has taken appropriate advice in respect of the existing conditions or chosen not to seek or receive such advice; and
		2. acknowledges that the Council has relied on the Contractor’s warranties in entering into this agreement
1. **VARIATIONS AND EXTENSIONS OF TIME**

7.1 Variations

* + 1. The Contractor 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.
	1. Adjustment of Price

 (a) If practicable, the value of the Variation must be agreed by the Contractor and the Council before the Contractor commences to execute the Variation or,

(b) If the value of the Variation is not agreed by the Contractor and the Council, the value must be determined by the Council by application of rates accepted by the Council.

 10.3 Extension of Time

(a) The Contractor by written notice to the Council may claim a time extension if delivery of the Services 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

(b) 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 Services

 (c) 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

(d) If supply of the Services is delayed by a cause beyond the control of the Contractor, the Contractor is entitled to a fair and reasonable extension of time for supplying the Services

(e) For the avoidance of doubt, the Contractor 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.

 (f) The Contractor accepts the risk of all costs, losses and expenses incurred because of a delay in progress or completion of the Services (including a delay caused by a Variation directed by the Council). The Contractor’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.

1. **TERMS OF PAYMENT**

Unless otherwise specified in the Payment Terms, the Council must pay the price specified in the Purchase Order by cheque or electric funds transfer within thirty days of the end of the month in which the invoice is issued by the Contractor. The invoice cannot be issued until the Services have been completed by the Contractor.

1. **CONTRACTOR INDEMNITIES**

The Contractor indemnifies the Council against all actions, proceedings, claims, demands, penalties, expenses and all other liabilities arising from or in relation to the performance or non-performance of any of the Contractor’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 indemnity.

1. **INSURANCE**

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

10.2 The Contractor must maintain the Contractor’s Insurances for at least six years following the completion of the Services unless otherwise specified in the Purchase Order

10.3 The Contractor must provide certificates of currency in respect of the Contractor’s Insurances before commencing the Services and when reasonably requested by the Council

1. **WORK HEALTH & SAFETY AND RETURN TO WORK**

If applicable:

11.1 The Contractor must comply with the *Work Health and Safety Act 2012* (SA), any regulations made under it and any associated policies adopted by the Council, and must ensure that its employees and contractors comply with all laws, regulations, notices and codes of practice having application to this agreement;

* 1. The Contractor must comply with the *Return To Work Act 2014* (SA) and any regulations made under it;
	2. The Contractor must comply with all reasonable directions and procedures relating to security and work health and safety as required by the Council; and
	3. The Contractor must immediately notify the Council of any incident or accident arising from the performance of this agreement, including any incident or accident involving the public.
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

12.1 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
	1. A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
		1. notify the other party as soon as possible giving:

12.2.1.1 reasonably full particulars of the Force Majeure Event;

12.2.1.2 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

12.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;

* + 1. Use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
		2. 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;
		3. Notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance and
		4. 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 Services
1. **TERMINATION**

13.1 The Council may immediately terminate this agreement by giving notice to the other party if the Contractor:

13.1.1 Ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement;

13.1.2 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;

* + 1. Becomes an externally-administered body corporate or an insolvent under

administration or becomes insolvent (each within the meaning of the *Corporations Act 2001*)

* 1. Termination of this agreement under this clause does not affect any accrued rights or remedies of either party
1. **CONFIDENTIAL INFORMATION AND FREEDOM OF INFORMATION**
	1. Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes contemplated by this agreement, and agrees that it will:
		1. Keep confidential; and
		2. Not use or reproduce in any form;

Any Confidential Information belonging to the other party. A party may depart from its obligations under this clause only with the written consent of the other party or as required by law or the terms of this agreement.

* 1. The Contractor consents to any disclosures made as a result of the Council complying with its obligations under the *Freedom of Information Act 1991* (SA), subject to any legally required consultation.
	2. Subject to clause 14.2, for the purposes of the FOI Act, the terms specified confidential in the Purchase Order are confidential. Unauthorised disclosure of the confidential sections and their subject matter is a breach of this agreement.
1. **AUDIT OF SERVICES**

The Contractor must keep the Council fully and regularly informed as to all matters relating to the Services and must provide to the Council any information reasonably requested by Council for the purposes of monitoring the performance of the Contractor’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
2. **GST**
	1. The total amounts payable under this agreement are inclusive of GST, if applicable.

18.2 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.