

1. Order process

The Council will issue a Purchase Order which is an offer to the Supplier. The Supplier can accept this Order by notifying Council, or by supplying the Goods or Services to Council.

2. Scope

The Supplier will supply, and Council will acquire and pay for, the Goods and/or Services in accordance with this Order.

3. Supply of Goods

The Supplier will pack the Goods so as to ensure their secure and safe delivery. The Supplier will deliver the Goods to Council at the Delivery Point by the Delivery Date. The Supplier will deliver with the Goods any documentation (including manuals, installation instructions and reference material) required to enable the Goods to be used by Council. Until delivery is accepted by an authorised officer of Council by signing by receipt of the Goods, risk of loss or damage to the Goods remains with the Supplier. Title in the Goods passes to Council upon delivery for the Goods.

4. Supply of Services

The Supplier will supply the Services punctually and with due care, skill and diligence, and otherwise in the manner Council reasonably requires. The Supplier warrants that it has the necessary skills, qualifications, admissions and expertise to perform the Services in accordance with the Order. Unless otherwise agreed, the Supplier will provide all equipment, personnel, and other resources the Supplier requires to perform the Services.

5. Price and payment

Unless otherwise agreed, the Price includes all Government taxes, duties and charges, including GST. The Supplier may invoice Council within 7 days after delivery of the Goods or completion of the Services. All invoices must: (i) be a proper tax invoice; (ii) include the number of this Order; (iii) properly identify the Goods and Services for which payment is being invoiced; and (iv) specify the amount due for payment in accordance with the Order. Council will pay invoices within 30 days after receipt of a correctly rendered invoice. Council is not liable to pay for Goods or Services which Council reasonably determines as not being supplied in accordance with this Order. Where Council queries or disputes an amount included in an invoice, Council does not have to pay the relevant portion of the invoice until the query or dispute is resolved.

6. Quality

Where the Goods or Services are Defective, Council may, without prejudice to Council's other rights and remedies, at its option: (i) reject the Goods or Services; (ii) require the Supplier to re-supply the Goods or Services; or (iii) accept the Goods or Services on terms acceptable to Council (including a reasonable reduction to the Price). The Supplier will promptly collect any rejected Goods from Council and refund all amounts paid by Council in respect of rejected Goods or Services.

7. Council Property

Council Property remains the property of Council. The Supplier will not use or modify Council Property except in the proper performance of this Order. The Supplier will take reasonable care of Council Property and hand over to Council any Council Property when it is no longer required by the Supplier or in any case within 7 days of a request by Council.

8. Confidentiality

The Supplier must treat as confidential all information provided by or obtained from Council in relation to this Order, and not disclose such information to any person except: (i) to its personnel and advisors on a need to know basis; (ii) with Council's consent; (iii) if required by law; or (iv) if it is in the public domain, except as a result of a breach of this Order.

9. Audit

The Supplier will, upon 7 days notice, permit and provide persons nominated by Council supervised access to the Supplier's premises and records to verify compliance by the Supplier with its obligations under this Order. The Supplier will do things reasonably necessary to facilitate a prompt and efficient audit.

10. Warranty

The Supplier warrants that: (i) during the Warranty Period the Goods are not Defective; (ii) the Goods are new and have not been previously used; (iii) at the time title in the Goods passes to Council, the Goods are free from all liens, charges and encumbrances; (iv) use of the Goods by Council will not infringe another person's intellectual property rights; and (v) the Goods comply with applicable laws. Without limiting clause 6, if the Goods are Defective during the Warranty Period, Council may advise the Supplier and the Supplier will arrange for the repair or replacement (as necessary) of the Goods at no cost to Council.

11. WHS Legislation

As soon as practicable, the Supplier must report to Council: (i) any breach of the WHS Legislation; or (ii) any notifiable incident under the WHS Legislation, that occurs in relation to the supply of Goods or Services under the Order. The Supplier is responsible for notifying the regulator about any notifiable incidents in accordance with the WHS Legislation. The Supplier must reasonably consult, cooperate and coordinate activities with the Council in relation to any matters under the WHS Legislation, including where there are mutual obligations. Unless the Council notifies the Supplier otherwise, when carrying out the Services, the Supplier is a PCBU responsible for management or control of the workplace under Part 2, Division 3, section 20 of the Work Health and Safety Act 2011.

12. Indemnity

The Supplier indemnifies and will defend Council against all claims, liabilities, losses, damages, costs and expenses made or awarded against, or suffered or incurred by, Council arising from or incurred in connection with a breach of this Order, or negligence relevant to this Order, by the Supplier. In conducting a claim, suit or action in respect of which the Supplier indemnifies Council, the Supplier will, at the Supplier's expense, comply with the reasonable directions of Council.

13. Statutory warranty

Supplier Goods come with guarantees that cannot be excluded under Australian Consumer Law. Without limiting clauses 10 and 12, Council is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Council is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

14. Changes and cancellation

Council may cancel an Order for Goods by notifying the Supplier prior to the delivery of the Goods. Council may change, suspend or cancel an Order for Services by notifying the Supplier. Where Council changes the Services, the Price will be subject to a reasonable adjustment. Where Council suspends the Services, payment will be suspended until Council notifies the Supplier to resume the Services. Where Council cancels the Services after the Supplier has commenced performing them, Council will pay the Supplier a reasonable price for the Services performed and reimbursement for reasonable expenses incurred as a result of cancellation (which collectively, together with any amounts already paid, will not exceed the Price).

15. General

- (i) The Supplier will not assign its rights under this Order without the prior consent of Council.
- (ii) The Supplier will comply with applicable laws and standards and, when on Council premises, comply with all Council policies.
- (iii) The Supplier will cooperate with Council and comply with any reasonable direction given by Council in relation to the supply of Goods or Services or any other matter that is relevant to the Order.
- (iv) If the Supplier becomes aware of a matter which is likely to affect the ability of the Supplier to perform this Order, it will immediately notify Council of it.
- (v) Council may set off money due to Council from the Supplier, or damages, costs or expenses recoverable by Council from the Supplier, against money due to the Supplier under this Order or another contract between the parties.
- (vi) If any part of this Order is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Order.
- (vii) Clauses 6 to 13 will survive the cancellation or completion of this Order.
- (viii) Subject to clause 13, this Order constitutes the entire agreement between Council and the Supplier in relation to its subject matter. Any terms printed on the Supplier's invoice or other documentation do not apply.
- (ix) This Order is governed by and construed in accordance with Queensland law and the parties submit to the jurisdiction of the Courts of Queensland.
- (x) This Order may only be varied by a document signed by each party.
- (xi) Failure or omission by a party to require strict or timely compliance with any provision of this Order will not affect any right of that party to remedies it may have in respect of any breach of a provision.
- (xii) The Supplier may not subcontract its obligations without Council consent.
- (xiii) The Supplier's appointment is non-exclusive, so Council may acquire similar Goods or Services from other persons or perform similar Services itself.

16. Interpretation

In this Order (i) clause headings are inserted for convenience only and do not affect interpretation; (ii) to the extent of any inconsistency between these clauses and the details on the front page of this Order, these clauses prevail; (iii) "includes" in any form is not a word of limitation; and (iv) the Price is in Australian currency and an obligation to pay money is an obligation to pay in Australian dollars; and the following terms are defined:

Council Property means any property or information of the Council in the custody or control of the Supplier or its personnel.

Defect means that the Goods or Services: (i) do not conform to the Specifications; (ii) have an error, defect or malfunction; (iii) are not fit for the purpose made known by Council or are not of acceptable quality as that term is defined in section 54 of the Australian Consumer Law; (iv) do not conform with the description or a sample or test item provided by the Supplier; or (v) otherwise do not comply with the requirements of this Order.

Defective means that the Goods or Services have a Defect.

Delivery Date means the delivery date specified in the Purchase Order or, if no date is specified, a reasonable time after the date of this Order.

Delivery Point means the location specified in the "Ship To" section of the Purchase Order or as otherwise notified by Council.

Goods means the goods specified in the Purchase Order.

Order means the details on the Purchase Order issued to and accepted by the Supplier and the clauses in these order terms and conditions.

Purchase Order means a purchase order issued to the supplier by Council.

Price means the price specified in the Purchase Order, or such other price as the parties agree in writing.

Services means the service specified in the Purchase Order.

Specifications means: (i) specifications in these clauses; (ii) specifications in, or referred to in, the Purchase Order; (iii) the documentation provided under clause 3; and (iv) the current applicable specifications published generally by the manufacturer of the Goods. To the extent of any inconsistency between these specifications, the specifications listed earlier in this definition prevail over those listed later.

Supplier means the person identified in the Purchase Order as the supplier.

Warranty Period means the period commencing on delivery of the Goods to Council and continuing for the period of 12 months or such longer period specified in the Order.

WHS Legislation means the Work Health and Safety Act 2011 (Qld) and the Work Health and Safety Regulation 2011 (Qld), any relevant codes of practice, guidelines and advisory standards.