

GLADSTONE REGIONAL COUNCIL – PURCHASE ORDER STANDARD CONDITIONS

1 Formation of Contract

- 1.1 Where:
- (1) the Supplier has provided GRC with a written quotation and GRC places a Purchase Order with the Supplier during the validity period of that quotation, a binding contract is deemed to be formed between GRC and the Supplier on the basis of the documents listed in clause 1.2 on delivery of the Purchase Order to the Supplier.
 - (2) GRC has made a verbal enquiry of the Supplier and GRC places a Purchase Order with the Supplier, the Purchase Order constitutes an offer to purchase and a binding contract is deemed to be formed between GRC and the Supplier on the basis of the documents listed in clause 1.2, upon the earlier:
 - (a) 7 days from the date of the Purchase Order unless the Supplier has within that time notified GRC of its refusal or inability to supply the Deliverables;
 - (b) on written acceptance of the Purchase Order; or
 - (c) on commencement of supply.
- 1.2 The following documents form the entire agreement between the parties ('Contract'):
- (1) the Purchase Order (including any special conditions);
 - (2) these Purchase Order Standard Conditions;
 - (3) the Specification; and
 - (4) any other document expressly listed in the Purchase Order.
- 1.3 No other conditions sought to be imposed by the Supplier, either verbally or in writing, prior to or subsequent to the issue of the Purchase Order apply, unless expressly accepted in writing by an authorised officer of GRC.
- 1.4 Where there is a preferred supplier arrangement in place between GRC and the Supplier:
- (1) Purchase Orders may be issued as required in the absolute discretion of GRC on the prices set out in the Supplier's submission or as set out in the Supplier's quotation (as applicable). A binding contract is deemed to be formed between GRC and the Supplier on the basis of the documents listed in clause 1.2 on delivery of the Purchase Order to the Supplier;
 - (2) GRC gives no guarantee or representation as to the volume or value of orders which will be issued to the Supplier; and
 - (3) the preferred supplier arrangement does not confer on the Supplier any exclusive right to supply the Deliverables to GRC.

2 Definitions and Interpretation

2.1 Definitions

In the Contract:

"Claim" includes any claim or legal action and all costs and expenses incurred in connection with it.

"Completion" means when:

- (a) all Goods, if any, have been delivered to the Site and (if applicable) installed and commissioned at the Site as required by the Contract and have been accepted by GRC in accordance with clause 6.4; and/or
- (b) all applicable Services have been completed in accordance with the Contract.

"Contract" means the agreement between the parties formed under clause 1.1 or clause 1.4 and comprised in the documents listed in clause 1.2.

"Defect" means any part of the Deliverables which does not comply strictly with the terms of the Contract or is otherwise unsatisfactory to GRC and includes any omissions.

"Deliverables" means the Goods and/or Services to be provided by the Supplier under the Contract and includes any documentation required to be provided by the Supplier including but not limited to operating manuals, reports, test data, material safety data sheets and drawings.

"Delivery Date" means the date(s) specified in the Purchase Order for delivery of the Deliverables.

"Force Majeure Circumstances" means circumstances which could not have been reasonably foreseen by a party and are outside the control of either party including but not limited to act of God,

"Goods" means the goods to be delivered and/or equipment to be delivered and installed by the Supplier as specified or referenced in the Purchase Order and/or Specification or otherwise advised in writing by GRC and includes, where the context permits, materials comprised in the Deliverables.

"GRC" means Gladstone Regional Council ABN 27 330 979 106.

"GRC's Staff" means GRC's employees, consultants, contractors and sub-contractors;

"GST", "Supply" and "Taxable Supply" have the same meaning as in the GST Act.

"GST Act" means a *New Tax System (Goods and Services Tax) Act 1999* and related legislation.

"Intellectual Property Rights" means all copyright, patents and all rights in relation to inventions, trademarks and designs.

"Personal Information" has the same meaning as in *Information Privacy Act 2009*;

"Price" means the price stated in the quote and/or Purchase Order.

"Purchase Order" means the formal order document issued by GRC for the Deliverables GRC requires.

"Request for Quote" means the request for quote issued by GRC in response to which the Supplier issued the Supplier's Quotation.

"Services" means the services to be performed by the Supplier as specified or referenced in the Purchase Order and/or Specification or otherwise advised in writing by GRC.

"Site" means the site where the Goods are to be delivered or the Services are to be performed as stated in the Purchase Order.

"Specification" means the specification or scope of work provided by GRC to the Supplier and includes any drawings.

"Supplier" means the entity supplying the Deliverables to GRC, to whom the Purchase Order is issued.

"Supplier's Quotation" means the quotation (if any) issued by the Supplier to GRC as referenced in the Purchase Order.

"Supplier's Staff" the Supplier's employees, agents, contractors, consultants and subcontractors (and employees, agents and contractors of those contractors, consultants and subcontractors).

"Valid Tax Invoice" means an invoice or adjustment note in the form required by the GST Act, identifying the amount and calculation of the GST payable in respect of the relevant payment, specifying the Purchase Order number and complying with the requirements of clause 9.2.

"Warranty Period" means the period stated in the Supplier's Quotation or, if none stated, the period of 12 months from the date of the Purchase Order.

2.2 Construction

Reference to:

- (1) a person includes:
 - (a) a corporation, incorporated association and government body; and
 - (b) the legal representatives, successors and assigns of that person;
- (2) month or monthly means calendar month or calendar monthly;
- (3) the singular includes the plural and vice versa;

- (4) a gender includes all genders; and
- (5) any Act includes all amendments or substitutions for that Act and the regulations made under that Act.

2.3 **Severability**

If any provision of the Contract is invalid or unenforceable it shall be severed from the balance of the Contract, but all other provisions of the Contract shall remain in full force and effect.

2.4 **Entire Understanding**

The Contract contains the entire agreement and understanding between the parties on everything connected with the subject matter of the Contract and supersedes any prior agreement or understanding on anything connected with that subject matter.

2.5 **Headings**

Headings are for convenience only and do not affect the interpretation, or form part of the Contract.

2.6 **Governing Law**

The Contract is governed by the laws of Queensland and each party submits to the jurisdiction of the courts of Queensland.

2.7 **Weekends and Public Holidays**

Where the date for doing anything under the Contract falls on a weekend or public holiday, that thing, unless otherwise agreed, shall be done on the next business day after that weekend or public holiday.

2.8 **Party's Obligations**

Every obligation by a party under the Contract is taken to include an obligation by the party to ensure that the party's employees comply with that obligation.

2.9 **Interpretation**

Nothing in the Contract will be construed or interpreted against GRC or to GRC's disadvantage on the basis that GRC prepared the Purchase Order and these standard purchase order conditions.

3 Price

3.1 The Supplier agrees to supply the Deliverables for the Price.

3.2 The Price is inclusive of:

- (1) all taxes (excluding GST), duties and other imposts for which the Supplier is liable;
- (2) all delivery, cartage and freight charges, wrapping and packaging costs, tariffs, duties, customs levies, excise, wharfage and storage charges;
- (3) all amounts payable for the use (whether in the course of manufacture or usage of the Goods or performance of the Services) of Intellectual Property Rights; and
- (4) all charges for supply of Goods or performance of Services.

3.3 The Price is fixed and not subject to any adjustment except where:

- (1) a Purchase Order is placed under clause 1.1(1) or clause 1.4 and increases in Price are expressly provided in the Supplier's quotation; or
- (2) a Purchase Order is placed under clause 1.1(2) in which case the Price may vary subject to the availability of Goods.

3.4 The Supplier must immediately notify GRC of any change in the Price and GRC may in its sole discretion cancel the Purchase Order without any cost, penalty or charge.

4 Supply Arrangements

4.1 The Supplier agrees to supply the Goods and/or perform the Services:

- (1) in accordance with the Specification;
- (2) in accordance with any relevant Australian law, regulation, standard or code;
- (3) to a high standard with due care skill and diligence;
- (4) fit for purpose and free from defects in materials and workmanship; and

- (5) with due expedition and without delay by the Delivery Date.

4.2 Substitute or alternative Deliverables will not be accepted without GRC's prior written approval.

4.3 If GRC requires the Supplier to submit samples of Goods or Services, the Supplier must not proceed to bulk manufacture the Goods or fully develop the Services until GRC has approved the sample.

4.4 The Supplier must:

- (1) at the time of dispatch of the Goods to the Site, notify GRC of the Purchase Order number and the description and quantity of the Goods dispatched;
- (2) package the Goods safely and securely so as to prevent damage during transit;
- (3) deliver and unload the Goods at the location at the Site as directed by GRC's staff (provided GRC may elect to unload should this require use of GRC equipment); and
- (4) include a delivery docket with each package that describes the Goods and quantity and the relevant Purchase Order number (and if applicable the item number for the Goods delivered).

5 Variations

5.1 GRC may on 30 days written notice to the Supplier change the Specification and/or standards applicable to the Deliverables to be supplied by the Supplier pursuant to a Purchase Order.

5.2 Where such change increases or decreases the cost of supplying the Deliverables an equitable adjustment will be made to the Price to reflect such increase or decrease in the cost of the supply.

5.3 A variation will not be binding on the parties until an amended Purchase Order is issued reflecting that variation.

5.4 Except as provided in this section 5, the Contract may only be amended by written agreement of both parties.

6 Defects

6.1 Signing of the delivery documentation by a representative of GRC will not constitute acceptance of Deliverables.

6.2 GRC reserves the right to conduct a thorough inspection of the Deliverables after delivery/completion and prior to acceptance. If the inspection reveals the Deliverables, or any component of the Deliverables, do not comply with any requirement of this contract, GRC may reject the Deliverables or component of the Deliverables by written notice to the Supplier.

6.3 If a Notice of Rejection is issued by GRC, at the request of GRC the Supplier must promptly:

- (1) re-supply the relevant Goods;
- (2) refund all payments related to the rejected Deliverables or component of Deliverables; or
- (3) re-perform or rectify the relevant Services to GRC's satisfaction;

and the Supplier must bear all costs associated with the return and replacement of the Goods or component of the Goods and/or all costs associated with the re-performance or rectification of the Services.

6.4 GRC will be deemed to have accepted the Deliverables on the earlier of:

- (a) the date GRC gives the Supplier written notice of acceptance of the Deliverables; or
- (b) 5 business days from the date of delivery of the Goods or Completion of the Services unless GRC has given notice under clause 6.2.

7 Warranties

7.1 The Supplier warrants:

- (1) that all Deliverables will:
 - (a) be fit for purpose;

- (b) meet the functional and performance criteria set out in or otherwise comply with the Specifications;
 - (c) be free from Defects in design, materials, workmanship and installation; and
 - (d) comply with any relevant Australian law, regulation, standard or code;
- (2) the accuracy and correctness of all performance data, measurements, specifications and details provided by the Supplier or contained in any Supplier brochures, catalogues or website;
- (3) that the Supplier has free and unencumbered legal right and title to the Goods sold and delivered to GRC;
- (4) that documentation will be in English, complete and accurate and suitable and sufficient for GRC and GRC's Staff to operate, make full use of and maintain the Deliverables as required; and
- (5) that the Supplier and the Supplier's Staff do not have any conflict of interest and will not place themselves into a position that may give rise to a conflict of interest, with their obligations under the Contract.
- 7.2 The Supplier will do all things and sign all documents necessary to assign to GRC the benefit of any manufacturer's warranties for the Goods.
- 7.3 Without limiting any other terms or warranty contained in the Contract or implied by law, the Supplier warrants that the Deliverables will perform their function without fault during the Warranty Period.
- 7.4 If at any time during the Warranty Period GRC notifies the Supplier of any Defect in the Deliverables, the Supplier must at the Supplier's cost promptly rectify that Defect by way of repair, replacement, rectification or reperformance of the Deliverables (as applicable).

8 Workplace Health & Safety & Environment

- 8.1 The Supplier must:
- (1) prior to commencement of the Services, if required by GRC, submit a Safe Work Method Statement ("SWMS") to GRC, and if necessary amend that SWMS until satisfactory to GRC;
 - (2) amend and resubmit the SWMS to GRC each time the contents of the SWMS change or as reasonably required by GRC;
 - (3) prior to commencement of the Services ensure the Supplier's Staff performing services at the Site undergo any induction training and prestart meetings required by GRC;
 - (4) provide the Supplier's Staff with personal protective equipment, information, instruction, training and supervision to ensure their own health and safety, and to ensure their acts or omissions do not adversely affect the safety of others;
 - (5) provide copies of any licences, tickets or qualifications required to be held by the Supplier's Staff for performance of the Services promptly on request by GRC; and
 - (6) notify GRC of any work related illness, injury, safety incident or near miss as soon as possible and within not more than 12 hours of occurrence and co-operate with GRC in any investigation.
- 8.2 The Supplier must ensure that the persons carrying out the Services comply with:
- (1) *Work Health & Safety Act 2011* and *Work Health & Safety Regulation 2011*,
 - (2) *Environmental Protection Act 1994* and regulations;
 - (3) GRC's policies, corporate standards and procedures relating to Workplace Health and Safety and Environment and any directions given by GRC managers for the Site;
- to the extent they apply to the work being performed under this Contract.

9 Payment

- 9.1 The Supplier will invoice GRC for the Price within the timing specified in the Purchase Order or, absent such specification, on or after:
- (1) delivery of the Goods
 - (2) completion of the Services;
- and GRC will pay the Price within 21 days of receipt of a Valid Tax Invoice for that amount.
- 9.2 The invoice must be addressed to Gladstone Regional Council at the address shown on the Purchase Order and must specify the Purchase Order number.
- 9.3 GRC is not obliged to pay any invoice that does not contain the Purchase Order number and any such invoice will be returned to the Supplier for correction before payment is made.
- 9.4 If any invoice or any part of an invoice is disputed, GRC will not be obliged to pay the disputed amount pending resolution of the Dispute under clause 17 or court order.

10 GST

- 10.1 All payments under the Contract are GST exclusive unless expressly stated.
- 10.2 If a party is required to pay GST in respect of any Supply, then the consideration payable for the Supply is increased by the GST payable by the Supplier on that Supply (allowing for any input tax credits).
- 10.3 The recipient must, subject to the party making the supply providing the recipient with a Tax Invoice, pay to the party making the supply an amount equivalent to the GST at the time the recipient is required to make the payment.

11 Insurance

- 11.1 The Supplier must take out and maintain for the duration of the Contract:
- (a) workers' compensation insurance in accordance with the *Workers' Compensation and Rehabilitation Act 2003* (or equivalent) for any of the Supplier's Staff providing the Deliverables;
 - (b) public liability insurance for the sum of \$20,000,000.00 per claim; and
 - (c) such other insurances as may be specified in the Purchase Order or Request for Quote.
- 11.2 The Supplier must give GRC evidence of the Supplier's insurances by the earlier of 2 business days before commencing work on Site or within 7 days of request.

12 Risk and Indemnity

- 12.1 The Goods shall be at the risk of the Supplier until Acceptance.
- 12.2 Except where transport is arranged by GRC, any damage sustained by the Goods during transit to the Site will be rectified by the Supplier at the Supplier's expense, to the reasonable satisfaction of GRC.
- 12.3 The Supplier releases, discharges and indemnifies GRC against any Claim for damages, loss, injury or death which may be brought against or made upon or incurred by GRC arising from:
- (1) any unlawful or negligent act or omission of the Supplier or the Supplier's Staff, in the course of the performance or attempted or purported performance of its obligations under this Contract;
 - (2) any breach of contract or statutory duty or any fraud or wilful misconduct by the Supplier or the Supplier's Employees; or
 - (3) any Defect in the Deliverables;
- but the indemnity will be reduced proportionally to the extent that any act or omission by GRC or GRC's Staff caused or contributed to the Claim.
- 12.4 The Supplier's liability for property damage under clause 12.3 is limited to \$10,000,000.00 unless otherwise agreed in writing.

13 Delays

13.1 If the Supplier is unable to supply any or all of the Deliverables by the Delivery Date, it must advise GRC immediately upon becoming aware. The Supplier must advise as to the proposed amended Delivery Date and GRC must advise whether this amended date is acceptable or, if not acceptable, GRC may give notice of termination of the Contract.

14 Force Majeure

14.1 Neither party will be held liable for breach of contract or any losses, damage or injury incurred by the other when performance of the Contract is prevented by Force Majeure Circumstances.

14.2 If either party is unable wholly or in part to perform its obligations under the Contract as a result of the occurrence of Force Majeure Circumstances, that party ("the Affected Party") will immediately give notice to the other of the details of the Force Majeure Circumstances and the impact on the Affected Party meeting its obligations under the Contract and the parties will seek to agree arrangements and adjustments to the Contract as necessary.

14.3 If agreement is unable to be reached the matter will be referred to resolution of the dispute under clause 17.

14.4 Unless otherwise agreed in writing, upon cessation of the Force Majeure Circumstances, both parties shall as far as practicable complete performance of their respective obligations under the Contract.

15 Termination for Convenience

15.1 Without prejudice to any of its other rights or remedies under the Contract or otherwise, GRC may at any time by written notice to the Supplier terminate the Contract.

15.2 If the Contract is terminated under clause 15.1 GRC is liable only for:

- (1) payments under clause 9.1 for accepted Deliverables provided in accordance with the Contract before the effective date of termination; and
- (2) reasonable costs actually incurred by the Supplier and directly attributable to the termination.

15.3 Council is not liable to pay compensation under clause 15.2 for any amount which would, in addition to any payments already made, exceed the Price.

15.4 The Supplier is not entitled to compensation for loss of prospective profits.

16 Default and Termination

16.1 GRC may immediately terminate the Contract by notice in writing to the Supplier if:

- (1) the Supplier has failed to remedy a breach of this Contract within 30 days after a notice to remedy has been given by GRC specifying the breach;
- (2) the Supplier:
 - (a) becomes insolvent;
 - (b) becomes subject to any form of external administration;
 - (c) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or
 - (d) is wound up, voluntarily or involuntarily.

16.2 The Supplier may terminate the Contract immediately by notice in writing if GRC has failed to remedy a breach of the Contract within 30 days after a notice to remedy has been given by the Supplier specifying the breach.

16.3 Termination of the Contract will not affect any claim or action either party may have against the other by reason of any prior breach of the Contract and will not relieve either party of any obligation under the Contract which is expressed to continue after termination.

16.4 If the Supplier fails to comply with its obligations under clause 6.3, GRC may have the Goods and/or Services re-supplied or re-performed by others and the Supplier shall pay GRC on demand any costs incurred by GRC in doing so.

16.5 Clauses 6, 7, 8, 12, 17, 20, 21, 22 and 23 survive termination of expiration of the Contract.

17 Dispute Resolution

17.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of the Contract ("a Dispute") unless that party has complied with this clause.

17.2 In this clause:

"Complainant" means the party who alleges there is a Dispute;

"Respondent" means the party with whom the Complainant has the Dispute.

17.3 If a Dispute arises under the Contract, the Complainant must tell the Respondent in writing:

- (1) the nature of the Dispute; and
- (2) the outcome the Complainant wants; and
- (3) what action the Complainant proposes will settle the Dispute.

17.4 The parties must then try to reach an agreement which will resolve the Dispute.

17.5 If an agreement is not reached within 2 weeks of notice under clause 17.3 the parties shall attend mediation with a mediator appointed by agreement between the parties or, failing agreement, appointed by the President of the Queensland Law Society.

17.6 The parties shall each pay one half of the mediator's costs.

18 Notices

18.1 Notices under the Contract must be in writing and may be signed by a party or its solicitor.

18.2 Notices are effectively given if delivered, posted or emailed to the other party at the addresses as may be notified from time to time and when posted will be deemed to have been received on the second business day after posting.

19 Assignment and Subcontracting

19.1 Neither party may assign its rights under the Contract without the prior written approval of the other.

19.2 The Supplier must not, without the prior written approval of GRC, subcontract any part of the works under the Contract.

19.3 Approval to any subcontract shall not relieve the Supplier of its obligations under the Contract.

19.4 The Supplier shall be liable for the acts, defaults or omissions of any subcontractor, employee or agent of the Supplier as if they were those of the Supplier.

20 Local Government Act

The Supplier acknowledges and accepts that the Supplier and any person performing the Services on behalf of the Supplier are bound by the provisions of sections 199 and 200 of the *Local Government Act 2009* and breach of either section will constitute a breach of the Contract.

21 Confidentiality

21.1 Each party agrees not to disclose any confidential information of the other party without the prior written consent of the other party except:

- (1) to its officers, employees and advisers requiring that information for the conduct of duties of a party under the Contract;
- (2) in respect to GRC to its auditors, elected councillors, Minister, or otherwise as required for local government purposes;

- (3) as required under the *Right to Information Act 2009*; and
- (4) as otherwise required or permitted by law.
- 21.2 Except as expressly permitted in writing by GRC, the Supplier must not issue any statement or release any information relating to the Contract.

22 Protection of Personal Information

- 22.1 If the Supplier collects or has access to any Personal Information in order to perform the Contract, the Supplier must when performing the Contract comply with the provisions of the Information Privacy Act 2009 as if it were an agency, and with the Australian Privacy Principles under the *Privacy Act 1988* which are applicable to GRC as an agency.
- 22.2 GRC may need to collect personal information about the Supplier or the Supplier's Staff, including details to establish a supplier account before invoices can be paid. The capture and retention of that information will be in accordance with GRC's Privacy Policy.

23 Intellectual Property

The Supplier grants (and must where applicable procure that relevant third parties grant) GRC an irrevocable, unconditional, perpetual, free of additional charge, non-exclusive, worldwide and transferable licence to exercise all Intellectual Property Rights in the Deliverables for any purpose. The Supplier warrants that it is authorised to grant the rights under this clause.

24 Waiver

The non-exercise or delay in exercising any power or right of a party does not operate as a waiver of that power or right, unless this is expressly agreed in writing

25 No partnership

The Contract does not create any partnership, joint venture or agency relationship between the parties.

26 No authority

Neither party may incur any liability on behalf of the other party except with that other party's prior written consent.