

Terms & Conditions of Purchase



1. Contract

(a) This Contract records the binding agreement between the parties relating to the provision of the Services on the terms and conditions stated in this Contract. The terms of this Contract are deemed to be accepted by the Supplier and to apply by virtue of the Supplier's performance of any part of the Services.

(b) Subject to clause 1(c), this Contract states all the expressed terms of the Contract between the parties in respect of the Services. It supersedes all prior discussions, negotiations, understandings, and agreements in respect of the Services. Subject to clause 1(c), this Contract supersedes and replaces the terms contained in any order, tax invoice, or other document issued by either Council or the Supplier in respect of the Services.

(c) Council may, at any time, require the Supplier to enter into a Council Standard Contract and, if it does so, that Council Standard Contract will apply to the Services and will supersede this Contract.

2. Term

This Contract continues until the Services have been completed unless it is terminated earlier in accordance with this Contract.

3. Delivery and Performance

(a) The Supplier must provide the Services at the time and at the location required by Council. Council must acknowledge receipt of the Services if they have been provided and meet the agreed specifications.

(b) The Supplier must supply all tools, facilities, materials, and other resources necessary to perform the Services and must ensure that all such resources are appropriate for performing them.

(c) The Supplier agrees to deal with Council in a manner consistent with good governance practices.

(d) The Supplier must observe and comply with Council Policies [Code of Conduct](#) and [Statement of Business Ethics](#). These can be found on Council's website.

(e) Council may reject Services that are defective or do not comply with this Contract. The execution of a delivery document, receipt of the Services, or payment of the Price does not constitute acceptance and will not prevent Council from exercising its rights and remedies under this Contract and under the law if the Services or Products are defective or do not comply with this Contract.

4. Price and Payment

(a) Subject to the Supplier's compliance with this Contract and the requirements of any laws, Council agrees to pay the Price to the Supplier no later than 30 days of the end of month in which the invoice was issued and received by council, or as negotiated between the Supplier and Council

(b) Unless otherwise agreed in writing between the parties, the Supplier must not give Council a tax invoice until Council has acknowledged receipt of the Services delivered in full.

(c) All invoices submitted by the Supplier must be tax invoices complying with *A New Tax System (Goods and Services Tax) Act 1999* (Cth), must clearly and accurately itemise the amounts payable for each item supplied in Australian dollars, and must identify the Services supplied under this Contract, including Council's official order number.

(d) If Council requests, the Supplier must provide Council with a written statement in such form as is prescribed at law, to the effect that the Supplier has met all its obligations in respect of remuneration payable to its employees deployed by it in carrying out the Services, payroll tax

in respect of wages paid or payable to those employees, and worker's compensation premiums payable in respect of those employees.

(e) After setting off (if Council chooses to do so in its absolute discretion) any moneys due from the Supplier to Council pursuant to this Contract, Council is only obliged to pay for Services carried out in accordance with this Contract. Any payment by Council is made on account only and does not prevent Council from enforcing its rights and remedies under this Contract or otherwise at law.

5. Passing of Risk and Ownership

Risk in the Products and ownership of them passes to Council upon receipt of the goods/services in full.

6. Safety

(a) In performing the Services, the Supplier must comply with all applicable law and codes of practice relating to the environment, work health and safety, and all relevant Australian Standards.

(b) The Supplier must ensure that the Services and their manner of supply does not put the health and safety of any person at risk.

(c) The Supplier must comply promptly with all directions given by Council, concerning matters of health and safety.

7. Warranties

(a) The Supplier represents and warrants to Council that:

(i) the Services will correspond to the description in, and requirements of, the Contract and conform to all samples and descriptions provided to Council by the Supplier;

(ii) the Services must be performed with the degree of professional skill, care, and diligence expected of a competent professional supplier experienced in carrying out the same services or services similar to the Services;

(iii) the Services will be fit for the purpose for which they are intended;

(iv) the Services are free of any lien or encumbrance;

(v) the Services are of the quality specified in the Contract, or if no quality is specified, such quality expected of a professional competent Supplier experienced in providing similar Services;

(vi) Council is entitled to the benefit of any manufacturer's warranties in respect of the Services;

(vii) the Services comply with all applicable laws, NSW and Commonwealth guidance on cybersecurity; and

(viii) the Supplier is aware of the requirements of Council, concerning the nature and quality of the Services, the purpose for which the Services are required, and that Council is relying upon the Supplier's skill and judgement in provision of the Services.

(b) All representations and warranties implied by law relating to the Services or their provision form part of the Contract and are not excluded, restricted, or modified by the application to the Contract of any provision of the *Competition and Consumer Act 2010* (Cth) or State Fair Trading Acts or their equivalents.

(c) The Supplier must:

(i) if the Services comprise the supply of any Products:

(A) deliver those Products to Council at the address requested in writing by Council; and

(B) ensure that the Products:

(a) are properly packed for delivery;

(b) are fit for their intended purpose;

(c) comprise of new materials of merchantable quality which are fit for their purpose and consistent with the nature and character of the Products;

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- (d) comply with all Law and relevant Australian Standards;
- (e) meet the requirements of the Contract;
- (f) are free from Defects;
- (g) are free and clear of all charges, liens, and encumbrances; and
- (h) do not infringe any patent, trademark, or copyright; or
- (i) if the Services comprise the carrying out of works:
 - (A) regularly and diligently progress the execution of the Services in accordance with the requirements of the Contract;
 - (B) complete the Services by the completion date stated in the Purchase Order or as otherwise advised by Council in writing to the Supplier;
 - (C) complete the Services so that they are free from Defects; and
 - (D) carry out and complete the Services in accordance with all Law, relevant Australian Standards, and the Building Code of Australia.

8. Intellectual Property

The Supplier:

- (a) subject to clause 8(b), grants Council an irrevocable, non-exclusive, royalty free, perpetual licence to use and copy the Products so that Council can make full use of them anywhere in the world for any purpose. The Supplier agrees that Council owns the Intellectual Property in any modifications to the Products made by Council;
- (b) agrees that all Intellectual Property rights in all Products created by the Supplier in the course of performing its obligations under this Contract shall be the sole property of Council and the Supplier hereby assigns to Council all such Intellectual Property;
- (c) warrants that if the Supplier engages a subcontractor to perform any of its obligations under this Contract (or assist it to do so), the Supplier has obtained a transfer of the Intellectual Property created by the subcontractor and warranties concerning Intellectual Property in the terms set out in this clause;
- (d) warrants that in performing its obligations under this Contract and in all submissions and proposals made by it to Council prior to this Contract, the Supplier (and any employee, agent, or subcontractor engaged by it) has not and will not infringe the Intellectual Property rights of any third party;
- (e) warrants that use by Council of anything delivered by the Supplier to Council in the course of performing its obligations under this Contract will not infringe the Intellectual Property rights of any third party; and
- (f) must, at its own expense, do all things and execute all documents (including further transfers and assignments) necessary to give full effect to this clause.

9. Defects

- (a) The Supplier represents and warrants that the Services are free of any errors, omissions, or defects or other failures (**Defects**) howsoever arising which is not in accordance with the Contract or renders the Services unsuitable for Council's requirements and occur at any time from the date of this Contract until the date that is 12 months after the completion of the Services (**Defects Liability Period**).
- (b) Prior to the expiration of the Defects Liability Period, the Supplier must do any one or more of the following if notified by Council because there are any Defects in the Services:
 - (i) refund the Price if Council returns the Products to the Supplier;
 - (ii) repair, modify, or replace (at the Supplier's cost) any of the Services that have Defects; and
 - (iii) reimburse Council (on demand) for all costs and expenses incurred by Council as a result of the Defect.

- (c) Any work undertaken by the Supplier to comply with clause 9(b) must be within the time specified in Council's notice issued under clause 9(b) or if no time is specified, within a reasonable time.
- (d) If the Supplier fails to correct or rectify any Defect within the time required, Council may rectify the Defect itself or by using a third party and any costs incurred will be a debt due and payable by the Supplier to Council.
- (e) This obligation survives termination and expiry of this Contract and the Supplier's compliance with this clause 9 does not prevent Council from exercising its other rights and remedies under this Contract or under the law. All warranties given by the Supplier are given separately and in addition to (and not instead of) the obligations of the Supplier under this Contract, including this clause 9.

10. Supplier to consult, comply with Council's Directions

- (a) The Supplier must meet with and consult with Council as required by Council and as may be necessary or desirable to ensure that the Services are supplied in accordance with this Contract. The Supplier must take all steps necessary to clarify and confirm Council's requirements for the Services.
- (b) The Supplier must comply with Council's directions and instructions in the performance of the Services. If required by Council, the Supplier must co-operate with other consultants and suppliers engaged by Council.

11. Indemnity and Insurance

- (a) The Supplier indemnifies Council from and against all actions, claims, costs, expenses, and damages in respect of:
 - (i) loss of or damage to any Council property, or damage of any kind suffered by Council, or
 - (ii) personal injury to any person or loss of or damage to any property, arising out of or by reason of any negligent or wilful act or omission by the Supplier in the provision of the Services. Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Contract. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.
- (b) The Supplier must (at its cost) effect and maintain:
 - (i) a public and product liability insurance policy for an amount of not less than \$20 million for any one occurrence from the date of this Contract until completion of the Services;
 - (ii) a professional indemnity insurance policy if the Supplier is providing any professional advice or professional services as part of the Services, which must be maintained until 7 years following the earlier of the termination of this Contract or the completion of the Services;
 - (iii) a workers' compensation insurance policy, if required by law, in accordance with applicable law for all employees or personal accident and injury insurance in the case of sole traders;
 - (iv) an asbestos liability policy of insurance for an amount not less than \$20 million if the Services comprises any asbestos decontamination work; and
 - (v) such other insurances as are agreed between the parties in writing.
- (c) The insurance required by clauses 11(b)(i) and 11(b)(ii) must cover Council's and the Supplier's respective rights, interests, and liabilities to third parties, including the liability of the Supplier to the Council.
- (d) All insurance policies established under this clause 11 must be on terms Council considers satisfactory. The Supplier must give Council evidence that the insurance policies required under this clause 11 have

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been established no later than 7 days after receiving a request from Council to provide such evidence.

12. Variation

Any variations to this Contract must be agreed by the parties in writing.

13. Confidentiality, Publicity and Privacy

The Supplier must:

- (a) not disclose to a third party Council's confidential information without Council's prior written consent;
- (b) take all precautions necessary to maintain secrecy and confidentiality and prevent disclosure of Council's confidential information;
- (c) not issue any press release or otherwise publish any statement or information concerning the subject matter of this Contract without the prior written consent of Council; and
- (d) comply with all privacy laws, as amended from time to time.

14. Termination

(a) Council may terminate the Contract by written notice to the Supplier:

- (i) if the Supplier breaches a term of the Contract and fails to remedy the breach within 14 days of the receipt by it of a notice from Council specifying the breach and requiring the Supplier to remedy it;
- (ii) if Council is of the reasonable opinion that the Supplier is unable or unwilling to comply with its obligations under the Contract;
- (iii) if the Supplier becomes bankrupt or makes an assignment of his/her estate for the benefit of his/her creditors or makes a composition or other arrangement with his/her creditors or if, being a company, the Supplier goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent overall of any of the assets of the Supplier; or
- (iv) in response to a finding of serious wrongdoing or other misconduct involving the Supplier or an individual providing Services under this Contract.

(b) Council may at any time terminate this Contract by giving the Supplier 28 days' written notice.

(c) Termination of the Contract pursuant to this clause shall be without prejudice to the rights of either party accruing before termination.

(d) The Supplier will be liable to Council for any loss whether direct, consequential, economic, or otherwise suffered by Council and arising out of or in connection with such termination or prior breach.

(e) Council will not be liable to the Supplier for any loss, whether direct, indirect, consequential, economic, or otherwise, suffered by the Supplier and arising out of or in connection with termination of the Contract.

15. Dispute Resolution

(a) If a dispute arises between the parties about this Contract (**dispute**) then the party who raises the dispute must tell the other party about the dispute in writing.

(b) The parties must meet and take all reasonable steps to resolve such dispute by negotiation within 14 days of notice under clause 15(a).

(c) If the dispute is not resolved under clause 15(b), then the dispute must be referred to mediation before the commencement of any legal proceedings about the dispute.

(d) If there is a dispute, the parties must continue to perform their obligations under this Contract.

(e) Nothing in this clause 15 prevents either party from seeking urgent interim or interlocutory relief.

16. Dealings

(a) The Supplier must not assign, sublicense, subcontract, or novate the provision of the Services (wholly or partly) without Council's prior written consent.

(b) The Supplier is liable for any act or omission, default, or negligence of any subcontractor or any employee or agent of the subcontractor as if it were the act, omission, default, or negligence of the Supplier. The Supplier must indemnify Council for all loss and any claim against Council arising from the act or omission of any subcontractor.

17. Asbestos Management Policy

The Supplier warrants that they have read Council's [Asbestos Policy](#) and agree that they will comply with the terms of that Policy.

18. Government Information (Public Access) Act

In accordance with section 121 of the *Government Information (Public Access) Act 2009* (NSW), the Supplier agrees to provide Council with immediate access to the following:

- (a) information that relates directly to the performance of the Services by the Supplier;
- (b) information collected by the Supplier from members of the public to whom it provides or offers to provide, the Services; and
- (c) information received by the Supplier from Council to enable it to provide the Services.

19. Civil Liability

The parties agree that, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations, and liabilities under this Contract whether such rights, obligations, or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise at law or in equity.

20. Modern Slavery

(a) The Supplier must take reasonable steps (appropriate to their size and circumstance) to identify, assess, and address Modern Slavery risks within their operations and supply chains. Reasonable steps includes the following:

- (i) Awareness of what Modern Slavery is and relevant legislation in Australia.
- (ii) Currently undertaking activities to identify and address Modern Slavery risks in the Supplier's operations and supply chain. Activities should, as a minimum, include adherence to Australian labour laws; a Modern Slavery risk assessment has been conducted; and a relevant policy (or equivalent) is in place.

(b) Where the Supplier is required to comply with the *Modern Slavery Act 2018* (Cth), a Modern Slavery Statement must be prepared and forwarded to Council for each reporting period (as defined under the *Modern Slavery Act 2018* (Cth)) that falls under the duration of this Contract.

(c) The Supplier must notify Council in writing as soon as practicable of any Modern Slavery occurrence or human rights violations detected within their operations or supply chain and the remedial action taken, including actions to reduce the risk of future occurrence. Failure to notify and to take action to rectify the situation and prevent it from occurring again will result in termination of the Contract.

21. Independent Contractor

(a) The Supplier is engaged as an independent contractor of Council and nothing in this Contract:

- (i) constitutes the parties as principal and agent, partners, joint venturers, or employer and employee; or

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- (ii) gives a party authority to bind any other party in any way.
(b) The Supplier must not (and must ensure that its Personnel do not) represent to any person that they are employees, agents, joint venturers, or partners of Council.

22. Public Interest Disclosures

- (a) Subject to clause 21, this clause 22 applies where the Supplier is contracted to provide Services on behalf of Council.
(b) In this clause 22 (Public Interest Disclosures), words and expressions:
(i) which are not defined in this Contract, but which have a defined meaning in the PID Act, have the same meaning as in the PID Act; and
(ii) which are defined in this Contract but, by such a definition, are given a different meaning in other clauses of this Contract to the meaning given in the PID Act, take the same meaning as in the PID Act in this clause.
(c) The Supplier must ensure that all individuals involved in providing Services under this Contract are made aware of the following:
(i) that those individuals are public officials for the purposes of the PID Act;
(ii) how to make a voluntary public interest disclosure;
(iii) Council's Public Interest Disclosure Policy; and
(iv) the fact that a person who is dissatisfied with the way in which a voluntary public interest disclosure has been dealt with may be entitled to take further action under the PID Act or another Act or law.
(d) The Supplier must notify Council in writing as soon as practicable of a voluntary public interest disclosure of which the Supplier becomes aware, where either:
(i) the disclosure relates to Council; or
(ii) the maker of the disclosure is known to be a public official associated with Council.
Note: Section 20 of the PID Act (Key terms – relationships) contains definitions of 'relates to' and 'associated with'.
(e) The Supplier must notify Council in writing as soon as practicable of serious wrongdoing committed, or alleged to be committed, by an individual providing Services under this Contract.
(f) The Supplier must use its best endeavours to assist in an investigation of serious wrongdoing if requested to do so by a person dealing with a voluntary public disclosure on behalf of Council or any other agency (as defined in the PID Act).
(g) The Supplier acknowledges that:
(i) Council has an obligation to take corrective action under section 66 of the PID Act; and
(ii) Council has a right to terminate the Contract in response to a finding of serious wrongdoing or other misconduct involving the Supplier or an individual providing Services under this Contract.
Note: The Supplier's attention is drawn to the potential for corrective actions that might affect a Supplier under section 66 of the PID Act.
(h) The Supplier will indemnify Council in relation to any payment of compensation by Council under section 66 of the PID Act, arising from or in connection with any serious wrongdoing or other misconduct involving the Supplier or an individual providing Services under this Contract.
(i) Subject to clause 16, if the Supplier subcontracts the Contract in whole or in part, the Supplier must ensure that the subcontract contains terms binding the person or body engaged under the subcontract that are equivalent to the terms binding the Supplier in this clause 22 (Public

Interest Disclosures).

- (j) The parties acknowledge that the regulations made under the PID Act may make further provision about terms that must, or must not, be included in an agency service contract or a class of agency service contracts.

23. Definitions

In this Contract:

- Commencement Date** means the date of the Purchase Order or any other date notified by Council.
Contract means the contract between Council and the Supplier comprising the Purchase Order and the Purchase Order Terms and Conditions.
Council means Temora Shire Council ABN 55 048 860 109 and includes its servants and agents.
Council Standard Contract means a contract in a form deemed appropriate by Council.
Defects has the meaning given in clause 9.
Defects Liability Period has the meaning given in clause 9.
Intellectual Property means all forms of intellectual property throughout the world including patents, petty patents, innovation patents, patentable inventions, know-how, trade marks (whether registered or unregistered), copyright, registered and registrable designs, business or company names, circuit layout rights, applications for registration of any of the foregoing and rights to apply for registration of any of the foregoing, whether created before or after the Commencement Date in Australia or elsewhere.
Law or law includes all statutes, regulations, by-laws, ordinances, rules, approvals, certificates, consents, orders, and other delegated legislation, and any rule of common law or equity, from time to time. Law will also be deemed to extend to a law amending, consolidating, or replacing that law, from time to time.
Modern Slavery has the same meaning as it has in the *Modern Slavery Act 2018* (NSW).
Personnel means any employees, secondees, agents, consultants, or contractors of the Supplier.
PID Act means the *Public Interest Disclosures Act 2022* (NSW).
Price means the amount stated in the details appearing on the Purchase Order inclusive of GST, cost of delivery, and any other on costs.
Products means any goods, materials, or products supplied under this Contract.
Purchase Order means the purchase order issued by Council detailing the Services and Price.
Purchase Order Terms and Conditions means the terms and conditions contained in this document.
Services includes any Products, services, and works performed or supplied under this Contract, as described on the Purchase Order.
Supplier means the legal entity described in the details appearing on the Purchase Order and includes its servants and agents.

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