

# Doing **Business** with Rockhampton Regional Council

## Guidelines for **Contractors** and **Suppliers**



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## Table of Contents

Introduction – Purpose of Booklet	3
Introduction to the Rockhampton Region	3
What does Council purchase?	4
Legal rules that affect Council’s purchasing	4
The Sound Contracting Principles explained	4
Procurement Requirements	7
Tenders	8
What is a tender?	8
<i>Exceptions from going to Tender</i>	8
What is a Pre-Qualified supplier?	9
How do I get on the register of Pre-Qualified suppliers?	9
How do I get work as a Pre-Qualified supplier?	9
How and when are purchasing and tendering opportunities advertised?	9
VendorPanel Marketplace Website	10
Payment Methods	11
Getting your invoices paid	12
Invoicing Requirements	12
How to Contact RRC Procurement & Logistics	12
Local Buy	12
Who is local buy?	12
What is Local Buy’s role?	12
How do I get on the Local Buy Supplier list?	12
Appendix A - Sample Purchase Order	14
Appendix B - RRC Conditions of Order	15



## Introduction – Purpose of Booklet

This guide is intended as an information resource to assist suppliers and contractors who wish to supply goods and/or services to Rockhampton Regional Council (Council). It gives you information that is intended to:

- Help you understand how Council purchases goods and services;
- Help you understand how Council tenders for goods and services;
- Explain how you can apply for inclusion on a register of pre-qualified suppliers; and
- Help you understand the legislative requirements under which councils must operate.

The guide also contains details of the rules Council has to follow when purchasing any product or service. These rules exist as an assurance to potential suppliers that we are being open, fair and transparent.

## Introduction to the Rockhampton Region

Located in the heart of Central Queensland, the Rockhampton Region is situated 570 km north of Brisbane and approximately 300 km south of Mackay. The Region spans an area that's covers the larger communities of Mount Morgan and Gracemere and boasts the City of Rockhampton as the main service centre for the much larger Central Queensland Region.

Council provides a range of local government infrastructure and services, such as:

- Water and wastewater services;
- Waste collection and disposal;
- Construction and maintenance of roads, parks, reserves, sports and community facilities; and
- A wide variety of community services.

Council also owns and operates the Rockhampton Airport and Fitzroy River Water.

## What does Council purchase?

Rockhampton Regional Council purchases a range of goods, services and contracted works throughout the year. Council's annual expenditure for goods, services and contracted works is a significant part of its expenditure and includes but is not limited to the following:

- a) Goods including chemicals, plumbing products, road making materials, building materials, fuels and oils, vehicles, plant and equipment, furniture and furnishings, and corporate stationery and materials.
- b) Services including professional consultants, legal services and maintenance contractors.
- c) Contracted Works including road and building construction, and plant and machinery contractors.

## Legal rules that affect Council's purchasing

Council is under a legal obligation to operate within the requirements of the Local Government Act 2009 and Local Government Regulation 2012.

Amongst other statutory requirements stipulated in the Act and Regulations, Council must comply with the Sound Contracting Principles when acquiring goods, services and contracted works. The Sound Contracting Principles are:

- a) Value for money;
- b) Open and effective competition;
- c) The development of competitive local business and industry;
- d) Environmental protection; and
- e) Ethical behaviour and fair dealing.

## The Sound Contracting Principles explained

It is important to understand the five sound contracting principles to appreciate the complex regulatory environment within which Rockhampton Regional Council must operate.

### Value for money

The concept of value for money is not restricted to price alone. The value for money assessment must also include consideration of:

- a) Availability;
- b) Whole-of-life costs factors including transaction costs associated with acquisition, reliability, maintenance and disposal;
- c) Non-cost factors including fitness for purpose, quality, service and support;

# Tenders

## What is a tender?

A Tender is a formal, open and structured process utilised to invite submissions from suppliers for the supply of goods, services or contracted works. Council is required to invite tenders for all acquisitions in excess of \$200,000. The Tender process is necessary to promote the Sound Contracting Principles of value for money, open and effective competition, engaging with local business, and ethical behaviour in procurement. Tenders are advertised on VendorPanel Marketplace and as a minimum they are open for submissions for 21 days.

Council's Tender documents are generally made up of four parts:

- 1) Part 1 - Conditions of Tender - guidelines detailing how to submit your tender;
- 2) Part 2 – Technical Specification / Scope of Works - details, both general and technical, specifying the goods, services or contracted works Council is wishing to acquire;
- 3) Part 3 – Tender Submissions Documents - tenderer submission details including, the Tender Form, Pricing Schedule (priced criteria), Corporate and Project Information Schedules (non-priced criteria), Departures and other schedules as required; and
- 4) Part 4 - Conditions of Contract - the applicable contract terms and conditions to be applied for the duration of the contract.

Notwithstanding the requirements under the Local Government Regulation (the Regulation) for Council to invite tenders or quotes, there are also instances under the Regulation where Council is exempt from the tender or quote process as detailed below.

## ***Exceptions from going to Tender***

As stipulated in the Regulation there are exceptions from going to tender or quote. These include:

- If a quote or tender consideration plan is prepared; or
- Engaging a supplier from a register of pre-qualified suppliers; or
- Utilising a Local Government arrangement; or
- Other exceptions as follows -

*“A local government may enter into a contract without first inviting written quotes or tenders if:*

*(a) the local government resolves it is satisfied that there is only 1 supplier who is reasonably available; or*

*(b) the local government resolves that, because of the specialised or confidential nature of the services that are sought, it would be impractical or disadvantageous for the local government to invite quotes or tenders; or*

*(c) a genuine emergency exists; or*

*(d) the contract is for the purchase of goods and is made by auction; or*

*(e) the contract is for the purchase of second-hand goods; or*

*(f) the contract is made with, or under an arrangement with, a government body.”*

## What is a Pre-Qualified supplier?

A pre-qualified supplier is a supplier who has been assessed by Council as having the technical, financial and managerial capability necessary to perform the services or supply the goods on time and in accordance with agreed requirements. The assessment process is fulfilled by initially inviting tenders to establish pre-qualified suppliers.

Following assessment, the suitable suppliers are placed on the register (list) of pre-qualified suppliers for the specified goods or services.

## How do I get on the register of Pre-Qualified suppliers?

A Register of Pre-Qualified Suppliers for particular goods and / or services will be publicly advertised on VendorPanel Marketplace. Suppliers will need to submit a tender prior to the Tender closing time and date. Suppliers deemed successful against the evaluation criteria and mandatory requirements of the tender will be sent a Letter of Acceptance and added to the register.

## How do I get work as a Pre-Qualified supplier?

All Registers of Pre-Qualified Suppliers are established as Standing Offer Arrangements, therefore **Suppliers are not guaranteed of any work.**

A Standing Offer Arrangement is an agreement subject to specified terms and conditions whereby the purchaser agrees to purchase their requirements of a specified number or range of items, during a specified time period from the supplier at agreed prices or on an agreed price basis. Normally no obligation to purchase a specified quantity exists although estimates for the guidance of the supplier may be given.

The Pre-Qualified Supplier's details and schedule of rates are made available to all Council staff to engage the Suppliers services on an as needs basis.

## How and when are purchasing and tendering opportunities advertised?

Council tenders must be advertised for 21 days as required by the Local Government Regulation. Council advertises tenders in the following ways:

- a) VendorPanel Marketplace (<https://www.vendorpanel.com.au/PublicTenders.aspx>);
- b) A link to Council's tendering opportunities on VendorPanel Marketplace is available from [Council's website](http://www.rockhamptonregion.qld.gov.au/ForBusiness/Tenders-and-Contracts) (<http://www.rockhamptonregion.qld.gov.au/ForBusiness/Tenders-and-Contracts>);
- c) Council tenders may also appear on other websites.



## VendorPanel Marketplace

Council utilises VendorPanel ([www.vendorpanel.com.au/Marketplace](http://www.vendorpanel.com.au/Marketplace)) to display Tender & Quote opportunities.

This website provides an online interface between suppliers and Queensland Government Agencies, Government Owned Corporations, budget sector agencies and Local Governments. Suppliers are able to view tender opportunities and download documents and electronically lodge tender submissions at no charge.

### How to view tender and quote opportunities

All prospective suppliers to Council must register online to view and download tender documentation. This will then allow any amendments to closing dates, specific requirements or site meeting announcements to be communicated to all parties.

Follow the steps below to create your free business profile in VendorPanel Marketplace:

1. Go to [www.vendorpanel.com.au/Marketplace](http://www.vendorpanel.com.au/Marketplace)
2. Search and select your supply categories.
3. Register as a supplier and request invitation.
4. Receive a 'get started' email from the VendorPanel system.
5. Verify your account using the link in your 'get started' email, then follow the prompts to complete the registration.

*(To register for multiple supply categories, please repeat steps 1-3 for each category and re-enter the details using the same email address – this will ensure all of the selected categories will be linked to your account).*

### Would you like to be notified of new tender and quote opportunities?

Upon registering to use VendorPanel Marketplace you will receive notifications of public quotes and tenders for the supply categories and regions of service you select during registration. This will enable your business to receive not only Council's tenders but also all government departments, agencies and other local government tender opportunities. To ensure you receive notification of suitable Rockhampton Regional Council quotes and tenders, please select all categories/sub-categories that are relevant to your business and the region of 'Fitzroy'.

### Contact Details

For specific tender queries or assistance registering please contact the Contracts & Tenders Section on 07 4936 8500 or email [tenders@rrc.qld.gov.au](mailto:tenders@rrc.qld.gov.au).

For system support enquiries/technical issues please contact the VendorPanel Suppliers Help Centre : <https://vendorpanelsuppliers.zendesk.com/hc/en-us>



## Purchasing Requirements

Purchase orders are required for all Rockhampton Regional Council purchases, except for those purchases made by Council's corporate purchase card. A sample of Council's purchase order is included at Appendix A.

### 1. Purchase orders provide the following information:

- Purchase Order Number;
- Date;
- Description of the goods or service required;
- Quantities of the goods or services;
- Price;
- Required delivery date;
- Delivery address;
- Any special instructions; and
- The name of the Council Officer who is purchasing the goods or services.

### 2. Delivery Requirements

Council requests that all goods supplied to Council are labelled clearly with the correct address and preferably the officer who has ordered the goods. A priced delivery docket or copy of the invoice should be provided with the goods and should include the following information:

- Purchase order number;
- Delivery address;
- Officers name; and
- Description of goods.

**NB:** For those purchases not made under one of Council's formal agreements with associated Condition of Contract, Council's Conditions of Order will apply (refer Appendix B)

## Payment Methods

There are several ways in which Council can pay for goods and services supplied, these include using:

- **Purchase (Credit) Card** – generally for items of low value but high usage. One-off purchases, overseas purchases, travel and accommodation.
- **Purchase Order / Tax Invoice** – the preferred method for purchasing transactions involving the purchaser providing the supplier with a purchase order number at the time of ordering the good and / or services.



## Getting your invoices paid

Your invoice should be addressed and forwarded to [apinvoices@rrc.qld.gov.au](mailto:apinvoices@rrc.qld.gov.au)

### The Role of Accounts Payable

Accounts Payable's role is to pay authorised invoices in accordance with Council's terms of trade. Simply sending an invoice to Accounts Payable does not guarantee payment, therefore please ensure you have obtained a purchase order number and referenced this on your tax invoice to speed up this process.

When an invoice is received at Accounts Payable it is checked to see if it has a valid purchase order number. If the invoice does not have a valid purchase order number, it will be returned to the supplier.

It will then be the supplier's responsibility to contact the Council officer who originally purchased the goods and / or services to obtain the purchase order number and send a new invoice to Accounts Payable. Accounts Payable staff may not know who the original purchaser was and therefore would not be able to follow this through on the supplier's behalf in a timely manner.

## Invoicing Requirements

A compliant Tax Invoice under the Tax Act must have:

- The words "Tax Invoice" appearing on the document;
- The Supplier's Identity;
- An Australian Business Number (ABN);
- A brief description of what is sold including the quantity and the price;
- The total GST amount;
- Date of Issue; and
- The GST amount for each sale.

In addition to the legal requirements under the Tax Act invoices sent to Council for payment must contain particular information in order to assist speedy processing and payment. These requirements include:

- A purchase order number; and
- A description of the goods or services delivered.



## How to Contact RRC Procurement & Logistics

You can contact Council's Procurement & Logistics staff as follows:

- Accounts Payable - [creditors@rrc.qld.gov.au](mailto:creditors@rrc.qld.gov.au)
- Contracts & Tenders - [tenders@rrc.qld.gov.au](mailto:tenders@rrc.qld.gov.au)
- Logistics Centres:
  - Fitzroy River Water - [Logistics-FRW@rrc.qld.gov.au](mailto:Logistics-FRW@rrc.qld.gov.au)
  - Dooley Street Depot – [Logistics-Ro@rrc.qld.gov.au](mailto:Logistics-Ro@rrc.qld.gov.au)
  - Gracemere Depot – [Logistics-Gr@rrc.qld.gov.au](mailto:Logistics-Gr@rrc.qld.gov.au)
- Phone Council's Customer Service on 07 4932 9000 or 1300 22 55 77.

## Local Buy

### Who is local buy?

Local Buy is the Local Government Association of Queensland (LGAQ) procurement services company. Established in 2001, Local Buy facilitates business relationships with local government and their suppliers.

### What is Local Buy's role?

Local Buy's core business is the creation of contractual arrangements for goods and services that can be used by Queensland councils, aggregating the demand for these goods and services to achieve better pricing and conditions, and eliminating the need for councils to establish their own supply contracts.

### How do I get on the Local Buy Supplier list?

To find out how you can get on a Local Buy contract you can:

- Go to the website - <http://www.localbuy.net.au/> ;
- Email – [enquiry@localbuy.net.au](mailto:enquiry@localbuy.net.au) ; or
- Phone (07) 3000 2280.

# Appendix A - Sample Purchase Order



## PURCHASE ORDER

Rockhampton Regional Council  
 PO Box 1860  
 Rockhampton Q 4700  
 Ph: 1300 22 55 77  
 Fax: 1300 22 55 79

<b>ORDER NUMBER</b>
<b>COR011841</b>

ABN 59 923 523 766

<b>ORDER DATE</b>
<b>24/10/2016</b>

Rockhampton Regional Council  
 PO Box 1860  
 ROCKHAMPTON QLD 4700

**Supplier Nbr:** 12605.01  
**Date Required:** 31/10/2016  
**Order Contact:** MEGAN YOUNGER  
**Page:** 1 of 1

Product Code	Description	Quantity	Unit Price	Amount
	SAMPLE LINE 1	5.00 ONLY	20.00	100.00
	SAMPLE LINE 2	1.00 ONLY	50.00	50.00

SAMPLE ONLY  
DO NOT SUPPLY

*All prices are inclusive of GST where applicable.*

**Order Total :** \$150.00

**RRC PREQUALIFIED CONTRACT NO:** NO

**LOCAL BUY CONTRACT NO:** NO

<b>DELIVERY LOCATION:</b>
City Hall, Bolsover Street, Rockhampton 4700
Contact: MEGAN 1300 22 55 77

<b>SPECIAL INSTRUCTIONS:</b>
DELIVER BEFORE 3PM

If you have any queries regarding this order, or payment of same, please contact the Requisitioner as listed above.  
 Order Number must be quoted on Invoice or payment will be withheld.



**Save Money, Paper and Time - We prefer to pay you by EFT & not by cheque. Please request this change by email to [creditors@rrc.qld.gov.au](mailto:creditors@rrc.qld.gov.au)**



Do we have your latest EMAIL, FAX, PHONE details? Are you receiving remittances with your payments? Please update your details by completing our standard update form that we will forward to you OR by emailing [creditors@rrc.qld.gov.au](mailto:creditors@rrc.qld.gov.au)

## Appendix B - RRC Conditions of Order

### 1. Introduction

- (a) Council has requested that the Supplier supply Goods and/or Services to Council.
- (b) The Supplier has agreed to supply Goods and/or Services to Council on the terms and conditions contained in this document.
- (c) These Conditions of Order do not apply to Goods and/or Services ordered from the Supplier in accordance with any other written contractual arrangement between Council and the Supplier (including but not limited to; Supply of Goods or Services Agreement, Consultancy Services Agreement or Construction Contract).

### 2. Definitions

In this document:

'Supplier' means the organisation, individual, partnership or corporation with whom Council contracts for the supply of Goods and/or Services.

'Contract' means a legally binding agreement between Council and the Supplier for the Supplier to supply Goods and/or Services to Council in accordance with the Order on the terms contained in this document.

'Goods' means the Goods supplied to Council under the Contract.

'Heavy Vehicle' has the meaning given in the *Heavy Vehicle National Law Act 2012* (Qld).

'Heavy Vehicle National Law' means any Legislative Requirement, principles of law or equity established by decisions of Australian Courts or requirements of persons with obligations relating to Heavy Vehicles including the *Heavy Vehicle National Law 2012* (Qld) and the *Heavy Vehicle National Law Regulation 2014* (Qld).

'Legislative Requirements' includes:

- (a) Acts, regulations, laws, local laws, by-laws and ordinances;
- (b) Orders, awards, Codes and proclamations of any Government Agency having jurisdiction in the country, state or territory in which the matters the subject of the Agreement or any part of it are being carried out and the requirements of any other relevant Government Agency;
- (c) Certificates, licences, consents, permits, approvals, orders or industrial awards of any Authority and requirements of organisations having jurisdiction in connection with the performance of the Services and any Supporting Operations;
- (d) Fees and charges payable in connection with paragraphs (a) to (c).

'Offer' means any written or verbal offer from the Supplier to supply Goods and/or Services to Council.

'Order' means any written or verbal request from Council for the Supplier to supply Goods and/or Services.

'Parties' means Council and the Supplier.

'Council' means Rockhampton Regional Council and its successors.

'Services' means the Services supplied by the Supplier to Council under the Contract.

'Supporting Operations' means all facilities used or occupied by the Supplier which are associated with or ancillary to the performance of the Services.

### 3. GST

In this Clause (3) the following terms have the following meanings:

"GST" means a tax imposed under the GST Law.

"GST Law" has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* or if that Act does not exist for any reason, means any Act imposing or relating to a GST and any regulation made pursuant to any such Act.

"Supply" and "Supplied" have the meaning given by the GST Law.

"Value" in relation to a Supply has the meaning given by the GST Law.

- (a) If the Supplier is or becomes liable to pay GST, in relation to any Supply under the Contract (a "Taxable Supply") the Supplier must issue an invoice or invoices to Council for the amount of GST referable to any Taxable Supply, such amount to be calculated by multiplying the consideration for the Taxable Supply by the rate of GST. The Supplier must include in the invoice such particulars as are required by the GST Law and such other information as Council may reasonably require so that Council may obtain an input tax credit under the GST Law for the amount of GST payable to the Supplier.
- (b) In addition to the other consideration payable by Council to the Supplier, Council will pay to the Supplier the amount of GST calculated in accordance with Clause (3) hereof on the same basis and at the same time as the other consideration payable by Council to the Supplier.
- (c) If any part of the consideration under the Contract is referable to both a Taxable Supply and anything that is not a Taxable Supply, the Value of any Taxable Supply shall be determined as required by the GST Law, or if

no requirement exists, by the same portion of the consideration as the Taxable Supply is of all supplies under the Contract.

- (d) If the abolition of, introduction of or a change in any GST ("GST Change") will result directly or indirectly in decreasing the costs to the Supplier of performing its obligations under the Contract, increasing the amount of any payment received by the Supplier from another person in relation to the performance of its obligations under the Contract, or reducing the payments the Supplier is required to make to another person in relation to any of its obligations under the Contract, then the Supplier must reduce the consideration by the amount of any decreased cost, increased receipt or decreased payment that directly or indirectly relates to the Contract.
- (e) If Council determines it is entitled to a reduction in consideration under Clause 3(d) and that reduction is not made by the Supplier, then the Parties shall confer in good faith and agree whether or not a reduction is applicable and if so the amount of the reduction. Where a reduction is applicable the consideration payable by Council under the Contract shall be reduced by the amount of the decreased cost, increased receipt or decreased payment arising from the GST Change as agreed between the parties.

#### **4. The Contract**

- (a) Provided the Offer remains open for acceptance, upon placing the Order, the Parties will be deemed to have entered into the Contract.
- (b) An Order may be placed by telephone, email or pre-paid post. The Order is deemed placed upon Council sending the email, placing the Order by telephone or posting the Order. Confirmation of receipt by the Supplier is not required.
- (c) The Contract comprises the following:
  - (i) The Conditions of Order;
  - (ii) The Order and any other documents expressly referred to in the Order; and
  - (iii) The Offer.
- (d) Where there arises any inconsistency or ambiguity between the documents which constitute the Contract, the order of precedence to resolve the inconsistency or ambiguity shall be from (i) to (iii) in Clause 4(c).

#### **5. Price Increases**

An increase in the price of Goods and/or Services under the Contract will only be permitted in the following circumstances:

- (a) If, in the Offer, it was expressly stated that the price was subject to any increase in the cost of the Goods and/or Services to the Supplier and the Supplier produces evidence to the reasonable satisfaction of Council of the increase in costs; or
- (b) An authorised officer of Council approved the price increase in writing prior to Council receiving the Goods and/or the Services.

#### **6. Specifications**

- (a) The Goods must be supplied in accordance with the specification, or description on the Order. No alternatives are to be supplied without the prior written approval of an authorised officer of Council.
- (b) All performance data, measurements, specifications, dimensions or other descriptive information quoted in the Order or in the Supplier's catalogues, brochures, descriptive literature or supplied by the Supplier will be binding on the Supplier within the tolerances specified in such documents.
- (c) All Goods supplied must be in accordance with any relevant:
  - (i) Australian standards and Commonwealth and/or State regulations in force as at the date of the Contract; and/or
  - (ii) Other Legislative Requirements.
- (d) As per *Work Health and Safety Regulation 2011* Section 339, the Supplier will forward all necessary information regarding chemical composition safety measures and product treatment via Safety Data Sheets when delivering the Goods to Council.
- (e) The Supplier must:
  - (i) Provide the Services with due care and skill and to the best of its knowledge and expertise;
  - (ii) Provide the Services in accordance with all Australian standards and Commonwealth and/or State regulations in force as at the date of the Contract;
  - (iii) Provide the Services in accordance with all other Legislative Requirements;
  - (iv) Comply with all lawful policies and procedures published from time to time by Council relating to any matter connected with the supply of Goods and/or Services under the Contract, including but not limited to health, safety, planning and building, the environment and Council's Code of Conduct; and

- (v) Ensure that it and its employees attain and maintain, at the Suppliers sole cost, all necessary levels of competency and skill required by industry and statutory bodies to obtain registration or licensing to carry out the Services.

## **7. Packaging**

- (a) Any packaging necessary for the safe transport and storage of the Goods is deemed to be included in the price quoted in the Offer unless specifically excluded.
- (b) The Offer, delivery documentation, packaging and the Supplier's Tax Invoice must specify where any packaging is returnable and the amount of deposit charges, if any. All returnable packaging which is charged on a refundable deposit basis or otherwise shall be clearly marked as such, bear a return address and will be returned freight forward at Council's convenience by a transporter selected by Council unless otherwise agreed.
- (c) The Supplier shall provide with each consignment sufficient delivery documents to enable Council to identify the contents of each package and in addition shall endorse all packages, delivery documents, and invoices with Council's purchase order number.

## **8. Inspection and Test**

- (a) Council reserves the right to inspect and test as appropriate all Goods supplied, within a reasonable time from receipt of the Goods, to ensure they comply with the requirements set out in the Contract.
- (b) Where Goods fail such inspection and tests they will be rejected and the Supplier notified of their rejection and the reasons for same. The Supplier must do one of the following, as directed by Council:
  - (i) Replace, free of charge, any and all rejected Goods with Goods of an acceptable standard; or
  - (ii) Refund Council for the cost of the Goods and any other expense incurred by Council in respect of the rejected Goods.
- (c) Council may elect to receive a replacement or refund of the rejected Goods.
- (d) Any rejected Goods shall:
  - (i) Within 30 days from notification by letter or email, be removed by the Supplier at its own expense from Council's premises; and
  - (ii) Be subject to any lien or other security interest Council may have.
- (e) If, on the expiry of 30 days, the rejected Goods have not been removed, Council may return the Goods freight forward, and at the Supplier's risk, to the Supplier.
- (f) All Goods of which the Supplier has received notice of rejection are held by Council at the Supplier's risk.

## **9. Delivery**

- (a) The Goods will be delivered to and the Services performed at such locations and at such times as nominated by Council.
- (b) Upon delivery, the Goods shall be accompanied by a priced (GST inclusive) delivery document with the Order number nominated thereon to be counter-signed by the receiving Council representative. A separate Tax Invoice shall be sent to Council as soon as possible to the address on the Order and shall state clearly the contents of the delivery, pricing (including freight costs), the Order number and requesting officer's details.
- (c) The price shall be inclusive of all freight, insurance and other charges in or in connection with the forwarding of the Goods to Council.
- (d) Any Goods or Services supplied by the Supplier remain at the risk of the Supplier and no liability, legal or otherwise, to pay for them shall arise until the Goods or Services are delivered and accepted by Council, subject to Council's rights set out in Clause 8.
- (e) Signing of the delivery documentation by a representative of Council will not constitute acceptance.
- (f) If the Goods or Services, or any part of the Goods or Services do not comply with the requirements set out in the Contract, at Council's request the Supplier shall reimburse Council for:
  - (i) Any amounts paid by Council for unsatisfactory Goods or Services, or any part thereof; and
  - (ii) Any costs incurred by Council in connection with the return of the Goods or Services or any part thereof.

## **10. Terms of Payment**

Payment will be made by electronic funds transfer as soon as practical on receipt of tax invoice subject to:

- (a) The price being in accordance with the Order or any price variation agreed in writing;
- (b) Council being satisfied that the Goods and/or Services have been supplied in accordance with the Order;
- (c) Receipt of a correctly issued Tax Invoice including any GST payable;
- (d) A correct Order number being quoted on the Tax Invoice; and
- (e) Council's terms of trading being 30 days from receipt of the Supplier's invoice, unless mutually agreed otherwise in writing.

## 11. Warranty

- (a) The Supplier warrants that all of the Goods delivered to Council:
  - (i) Will conform to the relevant description of the same contained in the Contract;
  - (ii) Shall be of merchantable quality and fit for the known purpose for which it is sold;
  - (iii) Are new unless otherwise specified; and
  - (iv) Are free from all liens and encumbrances and the Supplier has good marketable title thereto.
- (b) The Supplier further warrants that:
  - (i) It has all the necessary experience, skill and resources to perform and carry out its obligations in accordance with this document; and
  - (ii) The Services will be performed with due skill, care and diligence and by appropriately qualified and trained personnel.

The above warranties are in addition to any warranty or guarantee provided by the Supplier in respect of all or part of the Goods and/or Services or as implied by law or any Legislative Requirements.

## 12. Indemnity

- (a) The Supplier indemnifies Council in respect of all or any damage, cost, expense, or injury which occurs during the performance of the Services or supply of the Goods, resulting from:
  - (i) any breach of the warranties contained in Clause 11;
  - (ii) the Supplier's breach or negligent performance or non-performance of the Contract;
  - (iii) any claim made against Council by a third party as a result of the provision of Services or supply of Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier or its employees, representatives or agents; or
  - (iv) any claim made against Council by a third party for death, personal injury or damage to property as a result of the provision of Services or the supply of Goods,
- (b) The Supplier must effect and maintain the following insurances:
  - (i) Workers' compensation insurance as required to comply with legislative requirements;
  - (ii) If the Supplier is a sole trader, it must effect and maintain workplace personal injury insurance or similar form of insurance, reasonably required by Council;
  - (iii) Public liability and products liability insurance to a minimum value of \$10,000,000; and
  - (iv) Professional indemnity insurance to a minimum value of \$2,000,000 (where applicable),

At Council's request, the Supplier must produce evidence that the Supplier is maintaining the insurances required by this Clause 12(b).

- (c) The Supplier's indemnities under this Clause 12 will be reduced to the extent that any negligent act or omission of Council or its Personnel contributed to the event giving rise to the obligation to indemnify.
- (d) Nothing in this Clause 12 restricts or limits Council's general obligation at law to mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

## 13. Import Licences

If it is necessary for the performance of the Contract, for Council and/or the Supplier to hold or obtain any import licence, consent, by-law exemption, or authority then either or both Parties as appropriate shall be obliged to apply for same. If such licence, consent, by-law exemption, or authority is refused then either party may terminate this Contract by notice to the other Party and neither Party will be under any liability to the other.

## 14. Damage or Loss in Transit

Whilst the Goods are in transit, they are at the Supplier's risk.

- (a) Where the Goods have either been lost or damaged in transit, Council may elect the Supplier to either replace the Goods or arrange for the Goods to be repaired to the satisfaction of Council.
- (b) Council will sign all carrier's delivery documentation 'subject to check' and will notify the Supplier:
  - (i) In the case of damage, within three business days of receipt; or
  - (ii) In the case of Goods lost in transit, within 10 business days from being notified the Goods have been lost.

## 15. Variation

Any variations required by Council or the Supplier to the Goods and/or Services must be agreed to by the Parties in writing and will be the subject of an Order amendment raised by an authorised officer of Council.

## 16. Cancellation

- (a) Orders may be cancelled on receipt of written notice from Council to the Supplier.
- (b) Council is liable to pay the price for all Goods or Services already supplied or performed under the Order as at the date of cancellation and cancellation costs as set out in this Clause.
- (c) On receipt of the cancellation notice from Council, the Supplier must notify Council in writing of any cancellation costs.
- (d) Cancellation costs are the Suppliers' genuine losses incurred as a result of the cancellation as agreed in writing by the parties acting reasonably.

## 17. Assignment

- (a) Either Party may assign the whole or any part of their benefits or obligations under the Contract with the written consent of the other Party (whose approval shall not be unreasonably withheld).
- (b) The Supplier must not subcontract its obligations under the Contract without Council's prior consent. If the Contract is assigned with Council's consent, Council may require the assignee to sign a deed of assignment or other similar document.

## 18. Heavy Vehicle National Law

The Supplier must, at all relevant times:

- (a) Comply with, discharge its duties and ensure that its personnel comply with the provisions of the Heavy Vehicle National Law;
- (b) Ensure so far as is reasonably practicable, the safety of the Supplier's and any of its personnel's transport activities relating to the use of any Heavy vehicles;
- (c) Ensure that every Subcontract includes provisions expressly requiring Subcontractors to comply with the Heavy Vehicle National Law (including the Chain of Responsibility Provisions); and
- (d) Invite and permit Council to attend and participate in any risk assessment workshops associated with the Chain of Responsibility Provisions of the Heavy Vehicle National Law.

## 19. Interpretation

- (a) Headings are for convenience and do not affect interpretation.
- (b) The singular includes the plural and the plural includes the singular.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a thing includes the whole or any part of that thing.
- (e) The expression \$ or dollars means Australian dollars.
- (f) Every obligation by the Supplier includes an obligation by the Supplier to ensure that each of the Supplier's representatives, agents and employees comply with that obligation.
- (g) The Supplier acknowledges that it is entering into the Contract for commercial reasons and understands that certain terms of the Contract may be more favourable to Council.
- (h) If the whole, or any part, of a provision of this document is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this document has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance materially alters the nature or intended effect of this document.
- (i) Anything (including a right, obligation or concept) includes each part of it.
- (j) If an example is given of anything, such as by saying it includes something else, the example does not limit the scope of that thing.
- (k) A provision of this document must not be construed against a party only because that party was responsible for preparing that provision or this document.
- (l) The Contract shall in all respect be construed and operate as an Australian Contract and shall be governed by the laws of the State of Queensland.

## 20. Notices

- (a) A notice given under this document must be hand delivered or sent by prepaid post, or email to the Party's address for service.
- (b) A notice given in accordance with this Clause 20 takes effect when received or as specified below:
  - (i) If hand delivered, when delivered;
  - (ii) If sent by prepaid post – on the third business day after the date of posting, if posted within Australia; or
  - (iii) If sent by email – when, under the *Electronic Transactions (Queensland) Act 2001* (Qld), an electronic communication is taken to be received.



However, if the time at which the notice has taken to be received is not a business day or is after 5:00pm on a business day, it is taken to be received at 9:00am on the next business day.

- (c) A notice is taken not to be received, if:
  - (i) In the case of service by post, the notice is returned to the sender because the postal service was unable to deliver it; and
  - (ii) In the case of service by email, the party sending the notice receives an automated email response specifying that the email containing the notice was undeliverable.
- (d) A notice given by email is taken to be in writing, whether or not the email is printed by the addressee.
- (e) A notice given by email is taken to be signed by the Party if:
  - (i) The Party's name is typewritten into the notice; or
  - (ii) The Party's handwritten signature (which may be a digital image or a copy of a signature) appears in the notice.
- (f) If the originator of the email receives a read receipt from the addressee, the email is taken to be received no later than the time and date specified in the read receipt. A read receipt does not by itself amount to an admission by the recipient regarding the content or effect of the notice.
- (g) Nothing in this clause affects the provisions of the *Electronic Transactions (Queensland) Act 2001* (Qld) regarding attribution of electronic communications.

## **21. Relationship of Parties**

- (a) The Supplier is Council's contractor and not Council's employee or agent.
- (b) No party:
  - (i) is in any way the agent or partner of another party for any purpose whatsoever nor has any right to hold itself out as such; and
  - (ii) may make any promise, warranty or representation nor execute any contract or otherwise deal in the name of or on behalf of another party.