

Conditions of Order

DEFINITIONS

In the Purchase Order:

'Business Day' means a day which is not:

- a Saturday or Sunday;
- a public holiday, bank holiday or special holiday in the place in which the Site is located; or
- a day occurring on or within the period of 25 December to 1 January.

'Claim' means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Contract, the Supply or either party's conduct under the Contract before it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence).

'Commencement Date' means:

- the date or dates specified in the Purchase Order; or
- the date agreed in writing between the parties.

'Completion' means:

- all applicable Goods, if any, have been Delivered and installed in accordance with the Contract and have been accepted by the Council in accordance with Clause A.5.4;
- all applicable Services have been completed in accordance with the Contract;
- any documents or other information relating to the Completion of the Supply have been provided to the Council; and
- all applicable conditions have been satisfied.

'Completion Date' means the date or dates specified in the Purchase Order, if any, by which:

- the Supply must achieve Completion; or
- a nominated part of the Supply must achieve Completion, as may be adjusted by Clause A.1 and A.14.

'Conditions of Order' means these Conditions of Order, copies of which can be located on the Council's website at tsirc.qld.gov.au.

'Contract' has the meaning given in Clause A.1.2.

'Council' means the Torres Strait Island Regional Council ABN 15 292 645 165 a local government within the meaning of the *Local Government Act 2009* (Qld).

'Council's Representative' means the person who requested the Supply and is specified in the Purchase Order.

'Defect' means any part of the Goods and/or Services which does not comply strictly with the requirements of the Contract or is otherwise unsatisfactory to the Council and includes any omissions.

'Defects Liability Period' means the later of the period stated in the Purchase Order or 12 months commencing on Completion;

'Delivery' means the transfer of possession of the Goods to the Council, at the Site or other delivery address notified by the Council to the Vendor in writing.

'Good Industry Practice' means the standards (including any relevant Australian Standard), practices, policies, methods, acts and procedures generally followed or approved by relevant industries and contractors in Australia with respect to the Supply, and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a prudent, experienced, competent and skilled contractor for a project of a similar nature to the Supply.

'Goods' means the goods specified in the Purchase Order.

'Intellectual Property Rights' means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

'Legislative Requirements' includes

- acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, the State or Territory or local government relevant to the matters the subject of the Contract, the Supply or where any part thereof is being carried out;
- certificates, licences, consents, permits, codes, standards, approvals and requirements of organisations having jurisdiction in connection with the Contract;
- Australian Standards, National Construction Code and any other relevant standards; and
- fees and charges payable in connection with the foregoing.

'Notice' means a notice, consent or communication given in accordance with Clause A.28.

'Payment Claim' has the meaning given in Clause A.25.1.

'Payment Legislation' means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

'Payment Schedule' has the meaning given in Clause A.25.3.

'Personnel' means any officer, employee, agent, subcontractor, supplier or consultant of a party.

'Policies and Plans' means all requirements, policies, procedures, guidelines, rules and plans of the Council as may be from time to time, including any Policies and Plans set out or referenced in the Purchase Order.

'Price' means the sum stated in the Purchase Order.

'Purchase Order' means the purchase order for the Goods and/or Services issued by the Council to the Vendor.

'Qualifying Cause' means subject to Clause A.12, delay caused by any act, default or omission of the Council or the Council's Personnel (who are not employed by the Vendor) in the Council's capacity as a party to the Contract.

'Security Interest' has the meaning given in the *Personal Property Securities Act 2009* (Cth).

'Services' means the services specified in the Purchase Order and any additional services necessary to be carried out in order for the Council to receive the full benefit of the services specified.

'Site' means the site stated in the Purchase Order.

'Supply' means the supply of the Services, if any, and the Goods, if any.

'Vendor' means the party stated in the Purchase Order who is responsible for carrying out and completing the Supply in accordance with the Contract.

'WHS' means workplace health and safety.

INTERPRETATION

In the Contract, unless the context indicates otherwise:

- a singular word includes the plural and vice versa;
- headings are, in the interpretation of the any Contract document, to be disregarded;
- a reference to a clause, schedule, annexure or party is a reference to a clause of the Contract and references to this Contract;
- a reference to a party to the Contract includes the party's successors, permitted substitutes and permitted assigns;
- if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- a reference to a document or agreement (including a reference to a Contract document) is to that document or agreement as amended, supplemented, varied or replaced;
- a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- if any day on or by which a person must do something under the Contract is not a Business Day, then the person must do it on or by the next Business Day;
- a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- wherever the words 'include', 'included' or 'including' (or similar expressions) are used in the Contract, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative;
- no provision of the Contract is to be construed against the interests of the Council because the Council prepared or relies on the Contract; and
- the review, perusal, comment by the Council of any document or information submitted by the Vendor does not relieve the Vendor of any of its obligations or liabilities, including responsibility for the correctness of information submitted by the Vendor.

CONDITIONS OF ORDER

A.1 GENERAL

- The Conditions of Order apply to all arrangements for the supply of Goods, Services or rental items, unless a contract or agreement signed by the parties applies to those Goods, Services or rental items. If a contract or agreement applies, then the terms of that contract or agreement will apply where there are any inconsistencies with the terms below.
- The following documents form the entire agreement between the parties (**Contract**):
 - the Purchase Order (including any special conditions);
 - these Conditions; and
 - other documents expressly referred to by the Council in the Purchase Order including terms and conditions as shown on the Council's website.
- By commencing the Supply of any Purchase Order given pursuant to the Conditions of Order, the Vendor irrevocably accepts that only the Contract documents will apply to the Supply. No terms or conditions proposed by the Vendor will apply to the Supply (including, without limitation, terms stated by the Vendor in accepting or acknowledging a Purchase Order or included in any invoice).

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- A.1.4 If there is any inconsistency, discrepancy or ambiguity between the documents listed in Clause A.1.2, the Council will direct the Vendor as to the interpretation to be followed and the Vendor will not be entitled to claim as a result of or in connection with that direction.
- A.1.5 If upon receipt of a Purchase Order, the Vendor is unable to supply any or all of the Goods or Services by the Completion Date, it must advise the Council immediately. If advice is not received within 2 Business Days of receipt of the Purchase Order it will be deemed to be accepted and the Vendor will be required to carry out the Supply.
- A.2 TIMEFRAMES**
- A.2.1 The Vendor must commence the Supply on the Commencement Date and achieve Completion by the applicable Completion Date. The Council may, in its absolute discretion, extend the Commencement Date.
- A.3 VENDOR'S GENERAL WARRANTIES**
- A.3.1 Without limiting any other obligation under the Contract, the Vendor represents and warrants to the Council that it has:
- made its own investigation and assessment of the work, risks, contingencies and other circumstances involved in performing the Supply and reviewed all information that the Council has made available has made reasonable enquiries, in relation to the Supply, and it assumes complete responsibility for carrying out the Supply in accordance with the Contract;
 - satisfied itself that the Price covers the cost of complying with all the obligations under the Contract; and
 - the necessary authority and power to enter into the Contract and to perform the obligations under it.
- A.3.2 The Vendor acknowledges that the Council relied on the representations and warranties made in Clause A.3.1 when it entered into the Contract.
- A.4 VENDOR'S GENERAL OBLIGATIONS**
- A.4.1 The Vendor must carry out the Supply in accordance with, and ensure its Personnel comply with, the Contract.
- A.4.2 The Vendor must:
- carry out the Supply and perform all of its other obligations:
 - due care, skill and diligence;
 - in a thorough, competent and professional manner in accordance with Good Industry Standards; and
 - in accordance with Legislative Requirements and applicable Policies and Plans;
 - must maintain, and ensure its Personnel maintains, at its cost, any licences, accreditations, certificates or registrations the Vendor or its Personnel are required to possess;
 - supply all labour, plant, tools, equipment, appliances, consumables, spare parts and other property required to fulfil the Contract;
 - if it learns of anything that may affect, or has affected, the scope or suitability of the Supply, including Defects, then it must promptly Notify the Council as soon as possible;
 - co-ordinate the performance of the Supply with the Council and its Personnel and otherwise consult regularly with the Council;
 - carry out the Supply with due expedition and without delay and in accordance with any directions of the Council; and
 - without limiting its other obligations under the Contract, use reasonable endeavours to avoid, mitigate and overcome the effects of any delays to the carrying out of the Supply.
- A.5 RIGHTS AND OBLIGATIONS SPECIFIC TO GOODS**
- A.5.1 The Vendor warrants that all Goods (if any) will:
- be new, except to the extent expressly agreed otherwise in writing;
 - be of merchantable quality and free from Defects;
 - correspond with any samples or product descriptions which the Vendor provided to, or showed, the Council prior to the issue of the Purchase Order; and
 - be free from all liens, charges and encumbrances and other Security Interests of any kind at the time that title in them is to pass to the Council.
- A.5.2 The Vendor must:
- Deliver and unload the Goods at the location directed by the Council's Representative;
 - not Deliver the Goods earlier or later than the Completion Date, except:
 - with the consent of the Council; or
 - if the Vendor is required to install or commission the Goods;
- if the carrier of the Goods is not the Vendor, engage the carrier on terms that comply with Good Industry Practice;
 - at the time of dispatch of the Goods to the Site, notify the Council of the Purchase Order number and the description and quantity of Goods dispatched;
 - package the Goods safely and securely so as to prevent damage during transit, and in all other respects in accordance with the carrier's requirements;
 - clearly label Goods as Council property, so that it is visible to any person without having to remove any packaging; and
 - include a delivery docket that details the description and quantity of Goods and the relevant Purchase Order number.
- A.5.3 Any terms or conditions included in a delivery docket or other document provided by the Vendor or its Personnel, and signed by or on behalf of the Council at Delivery, will have no application to either the Contract or the Council.
- A.5.4 The Council will be deemed to have accepted the Goods only on the earlier of:
- the date the Council gives written notice to the Vendor that the Goods have been accepted; or
 - 20 Business Days after the date the Goods are Delivered, provided that during that 20 Business Day period the Council did not Notify the Vendor that any of the Goods were Defective.
- A.5.5 Risk in the Goods passes to the Council upon acceptance by the Council in accordance with Clause A.5.4. The Vendor indemnifies the Council against any loss of or damage to the Goods from Delivery until the Goods are accepted by the Council in accordance with Clause A.5.4.
- A.5.6 Title in the Goods passes to the Council on the earlier of Delivery or payment for the Goods. If, prior to Delivery, title to the Goods passes to the Council, the Vendor must set the relevant Goods aside and clearly mark them as being the property of the Council, in a manner reasonably required by the Council.
- A.5.7 If the Vendor is not the manufacturer, the Vendor must, at its own cost, obtain and provide, prior to Completion, the Council with any warranties available for the relevant Goods from the relevant manufacturer (including assigning such warranties to the Council as requested).
- A.5.8 The Council may at any time, whether at the Vendor's premises, the Site or any other place where the Goods are being manufactured or stored, test the Goods, or Services being performed, to ensure they comply with the Contract.
- A.5.9 The Vendor must give the Council's Representative, and any other person authorised in writing by the Council, reasonable access to any premises or facilities occupied by the Vendor or its Personnel where the Goods are being manufactured or stored, or the Services are being performed, to inspect or test any Supply or other material related to the Supply.
- A.5.10 On completion of the inspections or tests, the Vendor must promptly rectify any Defects in the Supply identified in the inspection or tests.
- A.5.11 Costs in connection with testing pursuant to Clause A.5.8 will be paid by the Council except where the Contract otherwise provides or the test is required because, or reveals, a failure of the Vendor to comply with the Contract.
- A.6 PERSONNEL**
- A.6.1 If the Supply constitutes 'building work' for the purposes of the Queensland Building and Construction Commission Act 1991 (Qld) ('QBCC Act'), the Vendor must supervise and manage the performance of the Supply (including any Supply performed by subcontractors) personally or by a competent representative and must otherwise comply with the requirements in sections 43 and 43A of the QBCC Act.
- A.6.2 The Council may by Notice direct the Vendor to have removed from the Site or from any activity in respect to the Supply, any of the Vendor's Personnel employed on the Supply who, in the Council's opinion, is incompetent, negligent or guilty of misconduct or for any other reason Notified to the Vendor by the Council.
- A.7 PRICE**
- A.7.1 In consideration of the proper performance of the Supply by the Vendor, the Council will pay the Vendor the Price.
- A.7.2 The Price and any rates in calculating the Price (together with any additions or deductions expressly provided for by the Contract):
- includes all costs, expenses, fees and charges incurred by the Vendor in performing all its obligations under the Contract; and
 - will not be subject to any rise and fall or other adjustment for any reason except as expressly provided by the Contract.
- A.7.3 If the Price comprises a Schedule of Rates, and the Schedule of Rates omits an item which should have been included, the item is deemed to have been included in other items in the Schedule of Rates, and the Vendor will have no Claim in connection with the omission.

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A.8 SUPPLIED INFORMATION

- A.8.1 The Vendor agrees:
- (a) unless the Council expressly agrees in writing, any information (whether documented or otherwise) supplied or made available to the Vendor by or on behalf of the Council:
 - (i) has been or will be provided only for the Vendor's convenience; and
 - (ii) has not been and will not be relied upon by the Vendor for any purpose (including entering into the Contract or performing its obligations under the Contract);
 - (b) the Council does not warrant, guarantee, make any representation as to, assume any responsibility or duty of care in respect of such information (including its accuracy, completeness or adequacy for the purposes of the Contract); and
 - (c) the Council will not be liable to the Vendor in contract, tort, equity, under statute or otherwise arising from or in connection with the supplied information (including its inaccuracy or adequacy), the provision of the supplied information or the non-provision of any other information by the Council.

A.9 COUNCIL'S REPRESENTATIVE

- A.9.1 The Council's Representative is:
- (a) the primary liaison and point of contact between the Council and the Vendor;
 - (b) responsible for monitoring and evaluating the Vendor's performance under the Contract and otherwise ensuring the Vendor's compliance with all applicable Policies and Plans and Legislative Requirements;
 - (c) not authorised either actually or ostensibly to amend or vary the Contract or enter into any contract on behalf of the Council; and
 - (d) authorised to act on behalf of the Council, as an agent of the Council, in discharging the Council's functions under the Contract, except to the extent expressly provided otherwise in the Contract or in any Notice issued by the Council.

A.10 DIRECTIONS

- A.10.1 The Council may issue directions to the Vendor in respect of anything under the Contract.
- A.10.2 If a direction is given to the Vendor by a representative (including employee or agent) of the Council other than the Council's Representative, the Vendor must promptly confirm the direction with the Council's Representative before acting upon it unless:
- (a) the direction is for urgent action;
 - (b) the direction relates to the Council exercising other rights of the Council under the Contract; or
 - (c) the Council has provided the direction in writing and notified that confirmation with the Council's Representative is not required.
- A.10.3 Directions by the Council may be given in writing or given orally and later confirmed by Notice. If the Vendor requests confirmation of an oral direction, the Vendor will not be required to comply with an oral direction until it has been confirmed in a Notice.
- A.10.4 Subject to Clause A.10.2, the Vendor must comply with any direction of the Council within the time nominated, or if no time is nominated, as soon as reasonably possible.

A.11 WORK HEALTH AND SAFETY

- A.11.1 In this Clause A.11, the terms 'Workplace' and 'Inspector' have the same meaning as in the Act.
- A.11.2 The Vendor must:
- (a) carry out the Supply in a safe manner;
 - (b) take all reasonable care to provide and maintain a Workplace free of accidents and injuries, including ensuring that there are processes in place to identify, assess and proactively control risks and carrying out the Supply in a way that is without risk to the health, safety and welfare of any person;
 - (c) comply with, and do all things necessary to enable the Council to comply with, all Legislative Requirements and Policies and Plans relating to WHS;
 - (d) comply with all lawful directions issued by any person with control of the applicable part of the Site pursuant to any Legislative Requirements relating to WHS;
 - (e) at all times have documented safe work practices and procedures for the Supply;

- (f) provide its Personnel with personal protective equipment, information, instruction, training and supervision to ensure their own health and safety, and to ensure that their acts or omissions do not adversely affect the health and safety of others;
- (g) provide, when requested by the Council, evidence of its compliance with any Legislative Requirements relating to WHS;
- (h) immediately Notify the Council of any accidents involving its Personnel and, within 1 Business Day, give the Council a detailed report of the circumstances and consequences of the accident; and
- (i) cooperate in any investigations relating to Workplace incidents.

- A.11.3 Without limiting any other obligation under the Contract, if material that might contain asbestos or other hazardous substance is discovered, the Vendor must:
- (a) immediately Notify the Council; and
 - (b) comply with all applicable obligations and restrictions imposed by any applicable Legislative Requirements.
- A.11.4 Upon request by the Council, the Vendor must provide all assistance and access to its offices, Personnel and records to enable the Council (which may be the Council's staff or external contractors) and any government agency to conduct audits on the Vendor's compliance with this Clause A.11. If any non-conformance is detected, the Vendor must immediately rectify the non-conformance at its own cost.
- A.11.5 If urgent action is necessary to protect the Supply, other property or people, and the Vendor fails to take the action, in addition to any other remedies of the Council, the Council may take the necessary action. If the action was action which the Vendor should have taken at its cost, the costs incurred by the Council in performing those obligations will become a debt due and payable to the Council from the Vendor.

A.12 SITE MATTERS

- A.12.1 The Council will give the Vendor sufficient access to the Site to reasonably enable the Vendor to perform that part of the Supply required to be performed on the Site. The Vendor may only use the Site for the purpose of performing that part of the Supply required to be performed on the Site.
- A.12.2 The Vendor must coordinate the Supply required to be performed on the Site with activities of the Council, the Council's Personnel and any other contractors (**Separate Contractors**) and will have no entitlement to Claim for doing so or for any impact of any interference caused to the Vendor or that part of the Supply required to be performed on the Site by any person on the Site.
- A.12.3 The Vendor must avoid any disruptions or inconvenience to:
- (a) The usual and safe operations of the Site; or
 - (b) the users of the Site, including Separate Contractors, except to the extent expressly permitted by the Contract.
- A.12.4 The Vendor must take all necessary steps to:
- (a) prevent damage to property on or near the Site (including existing utility services (including water, electricity, gas, telecommunications, drainage, stormwater, sewerage services and supporting infrastructure) and assets of the Council and work previously performed at the Site by another party);
 - (b) avoid unnecessary interference with the passage of people and vehicles on or near the Site; and
 - (c) prevent nuisance and unreasonable noise and disturbance on or near the Site.
- A.12.5 If any damage, harm, interference, nuisance or disturbance is caused by the Vendor or its Personnel, the Vendor must:
- (a) remedy, at its own cost and risk, the damage, harm, interference, nuisance or disturbance as soon as possible to the satisfaction of the Council; and
 - (b) indemnify the Council for any damage, loss, cost or expense suffered by the Council in connection with the damage, harm, interference, nuisance or disturbance.
- A.12.6 If the Vendor fails to comply with its obligations under this Contract, the Council may perform those obligations itself or through others and all costs, damages and expenses incurred by the Council in performing those obligations will become a debt due and payable to the Council from the Vendor.
- A.12.7 Subject to any Legislative Requirements that require otherwise, the Vendor must only access the Site, and perform any part of the Supply required to be performed on the Site, during the hours of work set out in the Purchase Order unless directed otherwise by the Council.

A.13 DELAYS AND EXTENSIONS OF TIME

- A.13.1 If the Vendor believes that anything may delay the progress of the Supply, the Vendor must Notify the Council with details of the estimated extent of the delay and the cause.

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- A.13.2 Subject to Clauses A.13.3 and A.13.5, the Vendor will only be entitled to an extension of time to the Completion Date where:
- the Supply is delayed by a Qualifying Cause which will prevent the Vendor achieving Completion by the Completion Date;
 - the Supply is not concurrently delayed (in whole or to the extent of any part) by a cause that is not a Qualifying Cause;
 - within 5 Business Days after the commencement of the Qualifying Cause, the Vendor gives Notice to the Council setting out the Qualifying Cause, the delayed activities and the extension of time to the Completion Date that is claimed; and
 - if the delay continues beyond the extension of time claimed under Clause A.13.2(c), the Vendor gives the Council an updated Notice every 5 Business Days that satisfies the requirements of Clause A.13.2(c) until the delay ends.
- A.13.3 The Vendor is not entitled to an extension of time for delays caused by it whether occurring before or after the Completion Date, nor for delays due to inclement weather or industrial conditions occurring after the Completion Date.
- A.13.4 Provided that the requirements of Clause A.13.2 are satisfied, the Council will determine (acting reasonably) the period of the delay to the Supply caused by the Qualifying Cause referred to in a Notice by the Vendor under Clause A.13.2(c) or A.13.2(d) and extend the Completion Date by that period.
- A.13.5 The Council may (without being obliged to do so) at any time and for any reason it thinks fit, extend the Completion Date. This right is solely for the benefit of the Council and may be exercised in its absolute discretion.
- A.13.6 If the Vendor does not make any Claim for an extension of time within the time or in the form specified in Clause A.13.2, the Vendor is not entitled to an extension of time, or to later Claim an extension of time, for that delay.
- A.13.7 For the avoidance of doubt, a delay caused by any act or omission of the Council or any failure by the Council to comply with this Clause A.13 will not cause the Completion Date to be set at large.
- A.14 VARIATIONS**
- A.14.1 The Vendor must not vary the Supply except as directed by written Notice by the Council under this Clause A.14.
- A.14.2 The Council may, at any time, direct the Vendor by written Notice to amend, increase, decrease or omit any part of the Supply (including omission for the purpose of or with the intention of contracting with another person to perform that part of the Supply) or change the quality, character or extent of any Goods and/or Services or to carry out or supply additional Goods and/or Services. No variation directed by the Council will invalidate the Contract
- A.14.3 If the Council and the Vendor fail to agree upon the value of a variation, the value of the variation will be a reasonable amount as determined by the Council's Representative.
- A.14.4 If the Vendor is of the opinion that any direction or instruction is a variation even though it was not expressed as such, the Vendor must Notify the Council within 3 Business Days of receipt of the direction or instruction and before giving effect to the direction or instruction.
- A.14.5 Except as provided in this Clause A.14, the Vendor has no Claim against the Council arising out of or in connection with any variation directed by the Council.
- A.15 DEFECTS**
- A.15.1 The Vendor must, at its cost, rectify any Defect during the carrying out of the Supply or the Defects Liability Period (if applicable).
- A.15.2 Without limiting Clause A.15.1, the Council may direct the Vendor by Notice to, at the Vendor's cost and risk, rectify any Defect.
- A.15.3 If any Defect is not rectified within 5 Business Days of a direction by the Council under Clause A.15.2, the Council may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to the Council from the Vendor.
- A.15.4 Instead of exercising its rights under Clause A.15.1 to A.15.3, if before Completion or otherwise during the Defects Liability Period, the Council discovers any Defects in any Goods, the Council may:
- Notify the Vendor that it rejects the Defective Goods, in which case the Vendor must, at its cost and risk, collect the Defective Goods within 5 Business Days of the Council's Notice; or
 - if the Vendor fails to collect the Defective Goods in accordance with preceding sub-clause, return the Goods to the Vendor at the Vendor's cost and risk,
- and the Council may recover from the Vendor all expenses incurred by the Council arising from the return of the Defective Goods as a debt due and payable by the Vendor to the Council.
- A.15.5 Any repairs or replacement Goods provided by the Vendor will be subject to the same warranties as the original Goods, from the date of repair or replacement and the Defects Liability Period will recommence from the date of repair or replacement.
- A.16 SUSPENSION**
- A.16.1 The Council may, at any time and for any reason, direct the Vendor to suspend the Supply or any part thereof by Notice to the Vendor and the Vendor must immediately comply.
- A.16.2 The Vendor has no Claim arising out of a suspension other than an extension of time under Clause A.13, except that the Vendor will have no entitlement to an extension of time if the suspension was caused or contributed to by the Vendor or its Personnel.
- A.16.3 The Council may at any time direct the Vendor to resume the Supply or any part thereof by Notice to the Vendor and the Vendor must promptly comply with such a direction at its cost.
- A.17 DEFAULT AND TERMINATION**
- A.17.1 The Council may, at any time, terminate the Contract for any reason in its absolute discretion by giving 5 Business Days' Notice to the Vendor.
- A.17.2 If the Council exercises its rights under Clause A.17.1, the Council will pay the Vendor in accordance with the Contract for the work completed up to the date of termination:
- any part of the Supply properly carried out and completed in accordance with the Contract up to the date of termination as determined by the Council's Representative; and
 - direct, necessary and reasonably incurred actual costs and expenses caused by the termination.
- A.17.3 The Vendor will have no other Claim as a consequence of the termination, including for loss of profit, revenue, goodwill or business opportunities, damage to reputation or for any indirect or consequential loss or for any other reason in relation to termination.
- A.17.4 The Council may, without limiting its rights at law, immediately terminate the Contract by Notice to the Vendor if the Vendor:
- breaches any part of Clause A.1, A.11 or Clause A.19;
 - becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller or anything analogous to these events;
 - breaches a term of the Contract and that breach cannot be remedied; or
 - breaches any term of the Contract and fails to remedy that breach within 5 Business Days of being directed by Notice to do so by the Council or the Council's Representative.
- A.17.5 If the Council exercises its rights under Clause A.17.4, it will not be liable to make any further payment to the Vendor for the Supply.
- A.17.6 Upon termination of the Contract, the Vendor must immediately, or on such later date as specified in the Notice of termination:
- cease carrying out the Supply;
 - terminate any outstanding subcontracts and recover from the subcontractor any property, documentation, material or information of the Council;
 - remove any rubbish or debris and leave the whole of the Site in a clean and safe condition; and
 - deliver to the Council the parts of the Supply executed by the Vendor up to the date of termination.
- A.17.7 Termination of the Contract will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.
- A.18 RISK AND INDEMNITY**
- A.18.1 The Vendor releases, discharges and indemnifies the Council and its Personnel (**Indemnified Persons**) from and against all Claims, expenses, losses and damages incurred in connection with:
- any negligent or unlawful act or omission by the Vendor or its Personnel;
 - any breach of the Contract by the Vendor;
 - any loss of or damage to real or personal property caused by the Vendor or its Personnel;
 - personal injury or death caused by the Vendor or its Personnel;
 - a breach of any Legislative Requirement; or
 - the infringement of Intellectual Property Rights by a third party,
- except to the extent caused by the negligent or unlawful act or omission of the Indemnified Persons.
- A.19 INSURANCE**
- A.19.1 Before commencing any of the Supply, unless agreed or specified otherwise, the Vendor must, at its cost, take out and maintain:
- a public and product liability insurance policy for an amount of not less than \$20 million for any one occurrence from the Commencement Date until the expiry of the Defects Liability Period, or if no Defects Liability Period applies, until the Completion Date; and
 - a professional indemnity insurance policy for an amount not less than \$5 million if the Vendor is providing any professional advice or professional services as part of the Supply, which must be maintained from the Commencement

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- Date until 7 years following the earlier of the termination of the Contract or the completion of the Supply on a claims occurring policy basis.
- A.19.2 The insurances required under Clause A.19.1 must be effected and maintained with an insurer that is authorised and licensed to operate in Australia and otherwise on terms and conditions that a prudent and competent contractor would insure with and obtain, as the case may be (taking into account the methods of carrying out the Supply and the Vendor's obligations and liabilities under or arising out of the Contract).
- A.19.3 The Vendor must provide a certificate of currency for each insurance policy required under Clause A.19.1 prior to commencing any part of the Supply and at any time upon request by the Council.
- A.19.4 The Vendor must pay any excesses for claims made under any policy of insurance effected by the Council or the Vendor, which relate to the Vendor or the Supply.
- A.20 CONFIDENTIALITY**
- A.20.1 The Vendor must not disclose to any person, or use for any purpose other than carrying out the Supply, the contents of the Contract and any other document or information obtained by the Vendor in the course of or in connection with carrying out the Supply (**Confidential Information**):
- without the prior written consent of the Council; or
 - unless required by law.
- A.20.2 The Vendor must immediately Notify the Council if the Vendor becomes aware of any unauthorised disclosure or use of the Confidential Information and return any Confidential Information (including copies) on the written request of the Council.
- A.21 PRIVACY**
- A.21.1 If the Vendor collects or has access to Personal Information (as defined in the *Information Privacy Act 2009* (Qld) (**IPA**)) in order to carry out the Supply, the Vendor must:
- comply with all applicable Policies and Plans and Legislative Requirements relating to privacy and the processing of Personal Information, including without limitation the IPA (including to enable the Council to discharge its obligations) and the *Privacy Act 1988* (Cth);
 - comply with any directions given by the Council regarding the handling of Personal Information;
 - ensure that its Personnel do not access, use or disclose Personal Information other than in connection with carrying out the Supply;
 - ensure that its Personnel who have access to Personal Information comply with obligations the same as those imposed on the Vendor under this Clause A.21; and
 - immediately Notify the Council on becoming aware of any breach of this Clause A.21.
- A.22 INTELLECTUAL PROPERTY RIGHTS**
- A.22.1 The Vendor grants the Council an irrevocable, royalty free, fully assignable licence, including a right to sublicense, to use the Intellectual Property Rights in any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material provided to the Council in connection with the Contract for any purpose associated with the Supply.
- A.22.2 The Vendor warrants that it will not infringe any third party Intellectual Property Rights in carrying out the Supply or otherwise in connection with this Contract.
- A.23 PERSONAL PROPERTY SECURITIES ACT**
- A.23.1 If the Council determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Vendor agrees to do anything the Council may reasonably require for the purposes of:
- ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
 - enabling the Council to apply for, and obtain, any registration or providing any notification in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**); or
 - enabling the Council to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- A.23.2 The Vendor waives each right to receive any Notice from the Council under the PPSA that can be waived.
- A.23.3 Except as expressly agreed in writing to the contrary, the Vendor:
- acknowledges that neither the Contract nor a transaction in connection with it is intended to provide a Security Interest in favour of the Vendor; and
 - agrees that it will not register or otherwise perfect (or seek to perfect) any Security Interest, and will remove any registration in connection with the Contract.
- A.23.4 The Vendor must:
- promptly Notify the Council if it knows or becomes aware that a third party has or claims a Security Interest on a product of the Supply:
 - supplied or to be supplied by the Vendor to the Council
 - owned by the Council; or
 - in which the Council has an interest;
 - give the Council any information reasonably required by the Council in relation to any such Security Interest or claim; and
 - on request by the Council, use best endeavours to ensure that the third party:
 - discharges any such Security Interest, and does not register or otherwise perfect (or seek to perfect), and removes any registration, in respect of any such Security Interest; or
 - subordinates any such Security Interest to the interest of the Council, by an agreement in form and substance satisfactory to the Council.
- A.23.5 Without limiting Clauses A.23.3 and A.23.4, at any time when title to or ownership of any product of the Supply, is passed to the Council, the Vendor must ensure that title or ownership is passed free of any Security Interest of the Vendor or any other person.
- A.23.6 Without limiting Clause A.20, neither the Council nor the Vendor will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Vendor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However, this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- A.24 DISPUTES**
- A.24.1 If any dispute between the parties arising from or in connection with the Contract (**Dispute**), neither party may commence court proceedings concerning the Dispute unless the party has complied with this Clause A.24 or the party seeks urgent injunctive or declaratory relief.
- A.24.2 A party claiming that a Dispute has arisen must Notify the other party of the Dispute and specify the nature of the claim (**Dispute Notice**). A party served with a Notice of Dispute may give a written response to the Notice of Dispute to the other party within 28 days of the receipt of the Dispute Notice (**Response**).
- A.24.3 Within 42 days of service of a Dispute Notice, or within 14 days of the receipt of a Response, whichever is the earlier, the parties must confer to attempt to resolve the Dispute. Each party must be represented by a person having authority to agree to a resolution of the Dispute.
- A.24.4 If the Dispute is not resolved under Clause A.24.3 within 30 days, either party may commence litigation.
- A.24.5 Each party must continue to perform its obligations under the Contract despite the existence of a Dispute.
- A.25 PAYMENT**
- A.25.1 After Completion, the Vendor must submit either electronically or in hardcopy to the Council's Representative and electronically to the email address nominated in the Purchase Order, its claim for payment (**Payment Claim**) for the Supply properly performed less any amounts which the Council may deduct, withhold or set-off and less any amounts not due and payable under the Contract, which must include:
- the Purchase Order number;
 - the calculations substantiating the amount which it claims; and
 - any other information which the Council and the Council's Representative may reasonably require.
- A.25.2 If the Payment Legislation does not apply to the Payment Claim submitted by the Vendor, the Council will pay the Vendor, or the Vendor will pay to the Council, as the case may be, the amount of the Payment Claim within 30 days from the date that the Payment Claim was received by the Council, except where the Council or Council's Representative disputes the Payment Claim, in which case:
- the Council will not be required to make any payment for the Payment Claim;
 - if the resolution of the dispute determines that the Council is to pay an amount to the Vendor, the Council will pay that amount upon resolution of that dispute; and
 - no interest will be payable by the Council in respect of any amount of Payment Claim for the time in which it was due until the time it was paid by the Council.

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- A.25.3 If the Payment Legislation does apply to the Payment Claim:
- (a) the Council's Representative will assess the Payment Claim and issue the Vendor a payment schedule stating the amount of the Payment Claim which in the opinion of the Council's Representative (having regard to Clauses A.25.4 and A.25.5), is payable by the Council (**Payment Schedule**) within 10 Business Days of the receipt of a Payment Claim. The Payment Schedule must also state:
 - (i) the Payment Claim to which the Payment Schedule applies; and
 - (ii) if the amount in the Payment Schedule is less than that in the Payment Claim, the reasons why;
 - (b) at any time up to the expiry of the Defects Liability Period, the Council's Representative may, by the issue of a Payment Schedule, correct an error in an earlier Payment Schedule or previous payment; and
 - (c) subject to Clauses A.25.4 and A.25.5, the Council will pay the Vendor, or the Vendor will pay to the Council, as the case may be, the amount of the Payment Schedule within 5 Business Days of the date of the Payment Schedule. Any payment by the Council is on account only, and is not evidence of any part of the Supply having been carried out in accordance with the requirements of the Contract.
- A.25.4 The Vendor will not be entitled to claim payment for:
- (a) Goods which have not been Delivered to the Site in accordance with the Contract, unless the parties otherwise agree in writing; and
 - (b) any part of the Supply that is Defective.
- A.25.5 The Council may set off against and deduct from any monies due to the Vendor, any debt, costs, damages, loss or expense due to or claimed by the Council from the Vendor arising from or in connection with the Contract or the Supply (including where required by Legislative Requirements).
- A.26 GST**
- A.26.1 In this Clause A.26, the terms 'GST', 'Recipient', 'Supplier', 'Supply' and 'Taxable Supply' have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- A.26.2 The consideration for a Supply made under or in connection with the Contract includes GST (including the Price).
- A.26.3 If a Supply made under or in connection with the Contract is a Taxable Supply, then at or before the time the consideration for the Supply is payable, the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Contract for that Supply and the Supplier must give the Recipient a Tax Invoice for the Supply.
- A.26.4 Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- A.26.5 Each party warrants that it was registered for GST when it entered into the Contract and agrees to Notify the other party immediately if it becomes aware of it ceasing to be registered for GST.
- A.27 GENERAL**
- A.27.1 The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- A.27.2 The Contract will be governed by the law of Queensland. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- A.27.3 The Vendor may not subcontract or assign any of its rights or obligations under the Contract without the Council's written consent. No approval given by the Council under this Clause (or failure to do so) will relieve the Vendor of its obligations under the Contract and the Vendor will be vicariously liable to the Council for the acts, defaults and omissions of subcontractors, and employees and agents of subcontractors, as if they were those of the Vendor.
- A.27.4 The Council may novate the Contract by Notice to the Vendor. The Vendor must execute any document reasonably required by the Council to affect its rights under this Clause.
- A.27.5 The Contract may only be amended by written agreement between all parties.
- A.27.6 The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in the Contract.
- A.27.7 Each party must do all things reasonably necessary to give effect to the Contract and the transactions contemplated by it.
- A.27.8 A right under the Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- A.27.9 A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause of the Contract continue in force.
- A.27.10 If the Vendor comprises two or more persons (whether as a joint venture, consortium, partnership or any other unincorporated grouping of two or more persons), the obligations and liabilities of those persons is joint and several, and any rights of those persons can only be exercised jointly.
- A.27.11 Clauses A.18, A.20, A.22, A.24 (and any other clauses which are capable of surviving) survive the expiration or termination of the Contract.
- A.28 NOTICE**
- A.28.1 A Notice under the Contract is only effective if it is:
- (a) in writing, signed by or on behalf of the person giving it;
 - (b) addressed to the person to whom it is to be given; and
 - (c) given by hand to that person's address, sent by registered mail to that person's address or sent by email to that person's email address.
- A.28.2 A Notice delivered under Clause A.28.1 is given and received:
- (a) if it is hand delivered or sent by email by 5.00pm (local time in the place of receipt) on a Business Day, on that day;
 - (b) if it is hand delivered or sent by email after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day; and
 - (c) if it is sent by post, 5 Business Days after posting.