



STANDARD PURCHASING CONDITIONS

STANDARD PURCHASE CONDITIONS
Part A – GENERAL PROVISIONS

GC1 DEFINITIONS

Unless the context otherwise requires, the following terms have the meanings given when used in the Contract:

Anti-Corruption Laws means Chapter 4, Division 70 of the Australian Criminal Code Act 1995 (Cth) and any other Relevant Law which prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or adviser of such person.

Business Day means a calendar day ending at 5.00pm, other than a Saturday, Sunday or public holiday in NSW, Australia or the location of the Site.

Supplier/Contractor's Plant and Equipment means the vehicles, plant, implements, appliances and equipment used by the Supplier/Contractor for carrying out its obligations under this Contract whether or not owned by the Supplier/Contractor but specifically excluding plant and equipment owned by Council;

Contract means the Purchase Order and these Standard Purchase Conditions including any amendment in the Schedule.

Supplier/Contractor means the party receiving the Purchase Order.

Supplier/Contractor Default means a failure by the Supplier/Contractor to perform the Contract or comply with any provision of the Contract.

Supplier/Contractor's Personnel means the Supplier/Contractor's employees, agents and sub-contractors, and employees, agents and Supplier/Contractors of the sub-contractors.

Council means the Ballina Shire Council.

Goods means any items specified in a Purchase Order.

Losses means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

Purchase Order means any order for Goods and/or Services issued by Council to the Supplier/Contractor.

Schedule means the schedule to these Standard Purchase Conditions and is intended to be used to amend or add to any provision of these Standard Purchase Conditions or the Purchase Order or both.

Services means any services specified in a Purchase Order.

Site means any area specified in a Purchase Order for the delivery of Goods or performance of Services.

WHS Requirements means all relevant law and government requirements relating to workplace health and safety and the environment, and Council's policies with respect to health and safety and the environment.

GC2 SUPPLY OF GOODS, SERVICES OR EQUIPMENT

The Supplier/Contractor must supply the Goods or perform the Services in accordance with the Contract. If any delay in delivering the Goods, performing the Services or complying with the Contract, occurs or is foreseen, the Supplier/Contractor must immediately notify Council in writing of the details including the cause and anticipated length of the delay.

GC3 WORKPLACE, HEALTH AND SAFETY (WHS) AND ENVIRONMENT

3.1 Supplier/Contractor's obligations and acknowledgments

The Supplier/Contractor must:

- a) acquaint itself with the WHS Requirements;
- b) When on Site or otherwise, comply with all WHS Requirements and any direction given by any duly authorised Council employee in respect of the WHS Requirements.

3.2 Reporting of incidents

The Supplier/Contractor must:

- a) report any incident reportable under the WHS Requirements to Council in writing as soon as reasonably practicable,
- b) provide Council with all reasonable assistance (including but not limited to access to relevant documents and Supplier/Contractor's Personnel records) in investigating any such incident.

GC4 ASSIGNMENT AND SUBCONTRACTING

The Supplier/Contractor must not subcontract, assign, novate, transfer, delegate or otherwise deal with the Contract or any right, obligation, duty or responsibility under it except with the prior written consent of Council.

GC5 LAWS AND REGULATIONS

The Supplier/Contractor must comply with all laws and government requirements affecting or applicable to the Goods or their supply and the performance of the Services and must pay any fees, charges, levies and taxes payable in relation to the Goods and/or Services.

GC6 CONTRACT DOCUMENTS

If there is any discrepancy, inconsistency or ambiguity between the Purchase Order and these Standard Purchase Conditions, the Purchase Order shall prevail. If there is any discrepancy, inconsistency or ambiguity concerning any other documents forming part of the Contract, the Purchase Order and these Standard Purchase Conditions shall prevail

GC7 INTELLECTUAL PROPERTY RIGHTS

The Supplier/Contractor warrants that the intellectual property rights of a third party will not be infringed by the supply of the Goods under the Contract, the use of those Goods by

the Council or the performance of the Services by the Supplier/Contractor and the Supplier/Contractor indemnifies and keeps Council indemnified in respect of any Losses arising from any such claim by a third party, including all legal and other costs incurred by Council in relation to this clause.

GC8 INDEMNITY

8.1 Indemnity by the Supplier/Contractor

The Supplier/Contractor indemnifies and keeps Council indemnified in respect of all Losses in connection with any act, error or omission of the Supplier/Contractor or the Supplier/Contractor's Personnel pursuant to the Contract that causes:

- a) any damage to the Site, the Goods or any property whether located on the Site or otherwise;
- b) death or injury to any person on the Site or otherwise;
- c) a breach by the Supplier/Contractor or Supplier/Contractor's Personnel of any law in the course of, or caused by, the performance of its obligations under the Contract;
- d) the breach by the Supplier/Contractor of an obligation under the Contract or a warranty contained in this Contract

8.2 Extent and duration of indemnity

The indemnities given by the Supplier/Contractor under **G.C.7** and **G.C.8.1** are continuing obligations, separate and independent from the other obligations of the Supplier/Contractor and survive the termination of the Contract.

GC9 PAYMENT BY COUNCIL

Provided the Supplier/Contractor complies with the Contract, Council will pay the Supplier/Contractor's tax invoice by the end of the calendar month following the calendar month in which a tax invoice implies that the Supplier/Contractor was at all material times a resident of Australia for Australian tax purposes, is received by Council.

GC10 WITHHOLDING TAX

10.1 Council's right to withhold

Notwithstanding any other provision to the contrary, if Council considers it necessary to satisfy its obligations under the Taxation Administration Act 1953(Cth) or the Taxation Administration Regulations 1976(Cth), Council may:

- a) withhold an amount from a payment made to the Supplier/Contractor; and
- b) pay the withheld amount directly to the Commissioner of Taxation.

10.2 Types of withholding payments

Without limitation, the withholding taxes that Council may have an obligation to withhold from a payment made to the Supplier/Contractor include:

- a) 46.5% (or such other proscribed percentage) of any payment for a supply by the Supplier/Contractor made in the course or furtherance of an enterprise carried on in Australia by the Supplier/Contractor as provided in section 12-190 of Schedule 1 to the Taxation Administration Act 1953 (Cth), where the Supplier/Contractor

does not quote its Australian Business Number on the invoice for the supply or on other documentation relating to the supply. In determining whether the Supplier/Contractor is a foreign entity, or carries on an enterprise in Australia, Council may have regard to the Supplier/Contractor's warranty in GC9. The Supplier/Contractor must supply such evidence as Council reasonably requires to support that warranty.

- b) Any other payments required by Council to be withheld from the Supplier/Contractor as provided in any other Act or Regulation from time to time, at the rate set out in such Act or Regulation.

10.3 Deemed payment to Supplier/Contractor

If the amount withheld in accordance with this **GC10** is paid by Council to the Commissioner of Taxation, it is deemed to have been paid to the Supplier/Contractor on the date on which the remainder of the payment to which it relates was paid by Council to the Supplier/Contractor.

10.4 No claim against Council

The Supplier/Contractor agrees and acknowledges that it has no claim against Council for any amounts withheld and paid to the Commissioner of Taxation in accordance with this **GC10**.

10.5 Amounts not withheld

If Council does not withhold an amount under this **GC10** which it is required to withhold pursuant to the Taxation Administration Act 1953(Cth) or the Taxation Administration Regulations 1976(Cth), the Supplier/Contractor agrees to pay that amount to Council, within seven (7) days from written request by Council.

10.6 No increase for the amount withheld

The Supplier/Contractor agrees that Council will not be required to increase the payment to the Supplier/Contractor by the amount withheld by the Council under this **GC10**.

10.7 Withholding tax exemptions and variations

Council agrees to provide all reasonable assistance to the Supplier/Contractor to establish the Supplier/Contractor's entitlement to any exemption available from a withholding tax or any variation of the amount of a withholding tax.

10.8 Failure to withhold

If Council fails to withhold an amount as required by the Taxation Administration Act 1953(Cth) or the Taxation Administration Regulations 1976(Cth) any penalty or interest paid by the Council for failing to withhold may be recovered from the Supplier/Contractor, but only if the failure to withhold arose as a consequence of a breach of a warranty or because the Supplier/Contractor did not provide information or assistance requested by the Council, or provided incorrect information, with respect to a withholding tax matter.

10.9 Agency warranty

The Supplier/Contractor warrants to the Council that it has entered the Contract on its own behalf and not as agent for any other person, unless otherwise specified in the Contract.

11.1 Interpretation

In this **GC11**, words or expressions have the same meaning as defined in the A New Tax System (Goods and Services Tax) Act 1999(Cth) unless the context makes it clear that a different meaning is intended.

11.2 GST inclusive amounts

All amounts used in this Contract, including amounts and variables in formulas, are inclusive of GST, unless it is clearly stated that they are intended to be GST exclusive.

11.3 GST gross up

If a party makes a supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply but for the application of this **GC11** is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

11.4 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit to which the other party is entitled for the loss, cost or expense and then increased in accordance with **GC11.3**. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be paid, that its entitlement is otherwise.

11.5 Tax invoices

Notwithstanding any other provision of the Contract, the recipient of a taxable supply made under or in connection with the Contract need not make a payment until the supplier has given the recipient a tax invoice (which includes the supplier/contractors Australian Business Number (ABN)) for the supply to which the payment relates. The supplier must give the recipient an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with the Contract within seven days after the date the supplier becomes aware of the adjustment event.

11.6 GST group

If a party is a member of a GST group, references to GST which the party must pay, and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

11.7 Indemnities

If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay and indemnify the payee against the amount of that GST.

GC12 RIGHT OF SET OFF

12.1 Council's rights

Council may at any time, deduct from any amount due or becoming due to the Supplier/Contractor under the Contract to meet:

- a) all debts and amounts due from the Supplier/Contractor to Council whether under or in connection with the Contract or otherwise; and
- b) the amount of any claims or liens that Council has reasonable grounds for believing may be made against the Supplier/Contractor under or in connection with the Contract.

12.2 Notice of amount deducted

Council must notify the Supplier/Contractor in writing of any amounts deducted under **G.C.12.1** and the basis for the deduction, at the time that the deducted amount would otherwise be due to the Supplier/Contractor.

GC13 DEFAULT BY SUPPLIER/CONTRACTOR

13.1 Insolvency

If the Supplier/Contractor becomes insolvent or bankrupt, or enters into an arrangement with its creditors, Council may terminate the Contract immediately by written notice to the Supplier/Contractor or the person in whom the Contract is vested.

13.2 Event of default

In the event of a Supplier/Contractor Default Council may serve written notice on the Supplier/Contractor terminating the Contract.

13.3 Failure to remedy

If, by the time specified in a notice served under **GC13.2**, the Supplier/Contractor has failed to remedy the Supplier/Contractor Default to the satisfaction of the Council, then Council may terminate the Contract by written notice, without prejudice to its other rights.

13.4 Supplier/Contractor's obligations on termination

On receiving a notice under **GC13.1** or **GC13.3**, the Supplier/Contractor must take any action relating to the termination of the Contract reasonably required by Council.

GC14 ANTI-CORRUPTION

14.1 Receipt of benefits

A director, employee or agent of the Supplier/Contractor must not:

- a) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
- b) enter into any business agreement with,

any Counsellor, employee or agent of Council other than as a representative of Council or in the ordinary and proper course of business between any of those parties.

14.2 Compliance with Anti-Corruption requirements

The Supplier/Contractor must not undertake any activity that may constitute a breach of any provision of the Anti-Corruption Laws.

14.3 Conflict of interest

The Supplier/Contractor represents that at the date of this Contract, there is no relationship between it and Council, between any of the Supplier/Contractor's directors or employees and Council or between the Supplier/Contractor and a director or employee of Council that gives rise to an actual or potential conflict of interest.

The Supplier/Contractor must immediately notify Council upon becoming aware that any such relationship exists. The Supplier/Contractor must take reasonable steps to eliminate or overcome the conflict of interest without in anyway adversely affecting its continued performance of its obligations under the Contract.

GC15 CONFIDENTIALITY

A party must not, without the prior written consent of the other party disclose confidential information:

- a) relating to the Goods, Services or hire of Equipment or a party's business or operations; or
- b) provided by one party to the other,

or use such information for purposes unrelated to this Contract, unless disclosure is required by an applicable law, stock exchange listing rule or taxation authority or to enable a party to obtain legal or financial advice.

GC16 NOTICES

16.1 A notice under the Contract must be in writing, in English and addressed to the receiving party, and will be deemed to have been received:

- a) if posted, on the 3rd day after posting;
- b) if delivered personally, upon delivery; or
- c) if sent by facsimile or email:
 - i. on a Business Day, on dispatch of the transmission; or
 - ii. on a day other than a Business Day, on the next Business Day,

unless the sender's facsimile machine or server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission.

16.2 Any notice to the Council must be addressed to the person nominated as the Purchasing Contact in the Purchase Order.

17.1 Status of provisions

- a) Part A of these Standard Purchase Conditions applies to every Contract.
- b) If Goods have been specified in the Purchase Order, **Part B** applies to this Contract.
- c) If Services have been specified in the Purchase Order, **Part C** applies to this Contract.
- d) These Standard Purchase Conditions cannot be added to or amended, other than as set out in the Schedule.

17.2 Interpretation

In the Contract unless the contrary intention appears:

- a) headings are for ease of reference only and do not affect the meaning of the Contract;
- b) the singular includes the plural and vice versa;
- c) words importing a gender include other genders;
- d) the words 'include' and 'including' are to be construed without limitation;
- e) other grammatical forms of defined words or expressions have corresponding meanings;
- f) a reference to:
 - i. a clause, schedule or appendix is a reference to a clause, schedule or appendix to the Contract and a reference to the Contract includes any schedules and appendices;
 - ii. any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901(Cth) or the equivalent State legislation, as applicable;
 - iii. a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - iv. 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency;
 - v. a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or Authority;
 - vi. a party includes its executors, administrators, successors and permitted assigns;
 - vii. a day means a period of 24 consecutive hours from midnight;
 - viii. a week means 7 consecutive days commencing and ending at midnight on Sunday; and
 - ix. a month means a calendar month
- g) where a party is more than one person the Contract binds all of them separately and each of them together;
- h) if the due date for anything to be done under the Contract falls on a day that is not a Business Day, then it must be done on the next Business Day; and
- i) any reference in the Contract to a number preceded by the words 'Sourcing No.', is included only to identify the Supplier/Contractor within the Council's supplier management systems and does not comprise part of the Supplier/Contractor's name or other formal identifiers (such as a registration or Council number).

17.3 Governing law

The Contract is governed by and must be construed and enforced in accordance with the laws of NSW and the parties unconditionally submit to the exclusive jurisdiction of the courts of NSW.

17.4 Entire agreement

The Contract contains the entire agreement between the parties and supersedes all prior arrangements, letters of intent, memorandums of understanding, purchase orders, representations and documents (if any) relating to the Goods, Services, or Equipment (including any terms and conditions proposed or delivered to the Council by the Supplier/Contractor) or the Contract.

17.5 Non-waiver

A waiver of any provision of or right under the Contract shall not constitute a waiver of any other provision or right.

17.6 Dispute Resolution

- a) If any dispute arises out of this contract ("the Dispute") a party to the contract must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief.
- b) A party or parties to this contract claiming that a dispute has arisen out of or in relation to this contract must give written notice ("the Notice") to the other parties to this contract specifying the nature of the Dispute.
- c) If the parties do not agree within seven (7) days of receipt of the Notice (or such further period as agreed in writing by them) as to:
 - i. the dispute resolution technique (e.g. expert determination) and procedures to be adopted;
 - ii. the timetable for all steps in those procedures; and
 - iii. the selection and compensation for the independent person required for such technique,the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

PART B – SPECIFIC PROVISIONS APPLYING TO GOODS

GC18 DELIVERY AND INSURANCE FOR THE GOODS

Unless provided in the Schedule, the Supplier/Contractor must deliver the goods to the nominated site **DAP (Delivered at Place – per INCOTERMS® 2010)**. Council will not be liable for any freight expense as a separate invoice item, nor for any freight expense sought by third party transport operators. Any invoices raised against Council by third parties for freight or carriage will be rejected and the third party advised to seek redress with the Supplier/Contractor.

The Supplier/Contractor must insure the Goods for the period when they are in transit to the Site against all loss or damage arising from any insurable cause, for an amount being not less than the full replacement cost of the Goods.

GC19 PROTECTIONS

Until they are delivered to Council in accordance with the Contract, the Supplier/Contractor must protect the Goods from loss or damage arising from any cause, and ensure that the Goods are appropriately packed, handled and transported to the Site to prevent damage or shrinkage while in transit or storage. The Supplier/Contractor must ensure that delivery documents accompany the Goods to the Site and bear the Purchase Order number.

GC20 PASSING OF TITLE AND RISK

20.1 Clear title

The Supplier/Contractor warrants that title in the Goods, when it passes to the Council under **GC20.2** will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.

20.2 Passing of title and risk

- a) Title to the Goods passes to the Council upon delivery of the Goods to the Site, provided however that the Supplier/Contractor bears the risk of loss or damage to the Goods until they are delivered to the Site.
- b) Unless provided in the Schedule to the contrary, where the Supplier/Contractor is responsible for the unloading of goods at the Site, delivery is not complete until all the Goods have been completely unloaded onto the Site.

GC 21 QUALITY OF WORKMANSHIP

21.1 Supplier/Contractor's warranty

The Supplier/Contractor warrants that the Goods will:

- a) comply with all the requirements of the Contract, relevant laws, government requirements and any applicable codes or standards;
- b) be of merchantable quality and fit for their intended purpose; and
- c) be free from all defects and imperfections affecting performance.

21.2 Defects liability period

The Supplier/Contractor must, at its expense, rectify any defect discovered within 12 months of the Goods being used by Council or 18 months from the date of delivery of the Goods, whichever is earlier.

21.3 Failure to rectify

If the Supplier/Contractor fails to rectify a defect within a reasonable time after receiving notice of the defect, Council may, without prejudice to its other rights, rectify the defect and the costs incurred in doing so will be a debt due from the Supplier/Contractor to Council.

GC22 INSPECTION

The Supplier/Contractor agrees Council may at its discretion and after reasonable notice:

- a) have the Supplier/Contractor's Plant and Equipment inspected to ensure compliance with all relevant laws and government requirements
- b) prohibit the use of any Supplier/Contractor's Plant and Equipment that the Council considers does not meet relevant laws and government requirements and require the Supplier/Contractor to remove and replace it, in which event he Supplier/Contractor:
 - i. must bear the costs associated with the removal and replacement of that item of Supplier/Contractor's Plant and Equipment; and
 - ii. is not entitled to compensation as a result of such prohibition, removal or replacement.

GC23 ACCEPTANCE

23.1 Notification of acceptance

Within 5 Business Days of delivery of the Goods to the Site, Council may notify the Supplier/Contractor whether the Goods are accepted or rejected, and if the Council fails to do so, the Goods will be deemed accepted.

23.2 Notice of rejection

If the Goods are rejected, Council will give written notice of rejection stating the reasons for the rejection and:

- a) requiring the Supplier/Contractor to remove the Goods and refund to the Council any amount paid in relation to the Goods; or
- b) directing the Supplier/Contractor to replace or rectify the Goods; or
- c) notifying the Supplier/Contractor that the Council elects to accept the Goods and claim damages for the Supplier/Contractor's failure to comply with the Contract.

If the Supplier/Contractor is directed to replace or rectify the Goods, the Supplier/Contractor must notify Council when the replacement or rectification is completed and **GC23.1** will apply.

23.3 No acceptance

None of the payment for Goods, neither inspection of Goods under G.C.23, nor delivery of Goods constitutes acceptance of Goods that do not comply with the Contract nor affects the ability of the Council to subsequently reject the Goods under this **GC23**.

PART C – SPECIFIC PROVISIONS APPLYING TO SERVICES

GC24 INSURANCE

The Supplier/Contractor must at all times during the continuance of this Contract maintain the following insurances and provide written evidence of such insurances to Council if required:

- a) workers' compensation insurance in relation to its employees;
- b) public liability insurance for a limit of not less than \$20 million from an independent reputable insurer in respect of loss or damage that may occur to any physical property, or death or bodily injury to any person that arises out of or in connection with the performance of the Services;
- c) third party motor vehicle liability insurance against liability for death or bodily injury to any person or damage to the Site or property located on the Site, for each of its vehicles that enter the Site during the performance of the Services; and
- d) insurance for the Supplier/Contractor's Plant and Equipment during its transit to the Site and throughout the period that the Supplier/Contractor's Plant and Equipment is on or near the Site against all loss or damage arising from any insurable cause and for a limit of not less than the market value (including delivery to Site) of the Constructional Plant.
- e) professional indemnity insurance for a limit of not less than \$10 million from an independent reputable insurer in respect of loss or damage that may occur arising from the Contract or non-compliance with it by the Supplier/Contractor.

GC25 QUALITY OF WORKMANSHIP

The Supplier/Contractor warrants that:

- a) The Supplier/Contractor, its employees, servants and agents will at all times be suitably qualified and experienced to perform the Services; and
- b) the Services will be performed in accordance with:
 - i. best practice standards of diligence, skill, care and efficiency to be expected of a competent Supplier/Contractor performing services of a similar nature to the Services; and
 - ii. all the requirements of the Contract, relevant laws, government requirements and any applicable codes or standards.

GC26 INSPECTION

The Supplier/Contractor grants Council access to the places where the Services are being performed for the purpose of inspecting Constructional Plant and work in progress at all times, upon receiving reasonable notice.

GC27 NO ACCEPTANCE

Neither payment for Services nor an inspection under **GC26** constitute acceptance of Services that do not comply with the Contract.

GC28 CONSUMABLES

If Council provides consumables for use by the Supplier/Contractor in the performance of the Services, including electricity, gas or water, then:

- a) the consumables must only be used by the Supplier/Contractor for the Services and must not be on-sold or wasted;
- b) Council does not make any representations about the quality or fitness for purpose of the consumables;
- c) risk in the consumables passes from Council at the time that they are delivered to the Supplier/Contractor;
- d) all conditions and warranties implied by legislation are excluded to the extent permitted; and

THE SCHEDULE

This is the Schedule to the Standard Purchasing Conditions of Ballina Shire Council published on its website www.ballina.nsw.gov.au and amended from time to time.

Any information recorded in this schedule is intended to add to or amend the Standard Purchasing Conditions published on the website www.ballina.nsw.gov.au as at the date of this Schedule and shall form a part of the Contract.