



**Redland**  
CITY COUNCIL

**Purchase Order Terms & Conditions**  
**For the Supply of Goods and Services**

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## Supply Agreement

Dated

### Background

- A. The Contractor is a provider of the Goods and/or Services and has agreed to Supply the Goods and/or Services.
- B. The Principal has agreed to purchase the Goods and/or Services on the terms and conditions set out in this Contract.

### Operative Provisions

#### 1. CONTRACT JURISDICTION

The contract shall be governed by the laws of the State of Queensland and the parties hereby submit to the exclusive jurisdiction of the courts of the State.

#### 2. DEFINITIONS AND INTERPRETATION

##### 2.1 Definitions

In the Contract, except where the context otherwise requires:

'**ACL**' means the Australian Consumer Law (being Schedule 2 of the *Competition and Consumer Act 2010* (Cth)).

'**Clause**' means a clause of these Purchase Order conditions.

'**Approval**' means consent, authorisation or permit required under statute, regulation or direction of an Authority.

'**Authority**' means a Government Agency or its representative.

'**Business Day**' means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday in the Jurisdiction.

'**Change Order**' means any written instrument provided by the Principal to the Contractor from time to time that alters the details, scope and specifications of the Supply.

'**Claim**' means a claim, action, proceeding or demand made against the person concerned however it arises and whether it is present or future, fixed or ascertained, actual or contingent.

'**Confidential Information**' means the terms and existence of this Contract and all information belonging or relating to a party to this Contract, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of this Contract or that is in fact, or should reasonably be regarded as, confidential to the party to which it belongs or relates.

'**Consequential loss**' means any consequential, indirect, exemplary or punitive damage (including, but not limited to, loss of actual or anticipated profits or revenues, loss by reason of any shut down or non-operation, increased cost of borrowing, capital or financing, or loss of use or productivity) whether caused by or in relation to breach of contract, warranty, tort, product liability, contribution or strict liability.

**'Contract'** means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded Contract between the Principal and the Contractor.

**'Contract Price'** means the monetary consideration stated in the Contract and/or the Order for the Supply of the Goods or Services to the Principal as a lump sum, schedule of rates or price per unit or by weight or volume or otherwise.

- (a) Where payment is to be made on a lump sum basis, the sum which is stated in the contract to be payable to the Contractor for the Supply of the Goods and/or Services by the Contractor and the performance of the obligations of the Contractor under the Contract;
- (b) Where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in a schedule of rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in a schedule of rates;
- (c) Where the payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b),

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

**'Contractor'** means the party named in Schedule 1 as the seller of the Goods and/or Services.

**'Corporations Act'** means the *Corporations Act 2001* (Cth).

**'Council'** means the Redland City Council.

**'Day'** means a calendar day.

**'Date for Delivery'** means :

- (a) where the Contract or Order specifies a date for delivery, that date; or
- (b) where the Contract or Order specifies a period of time for delivery, the last day of that period.

**'Default Notice'** means a Notice given by the Principal to the other party to the Contract in accordance with any specific default clause of the Contract.

**'Defects'** means defects, omissions or faults with respect to the Goods and/or Services, including but not limited to, any which arise from faulty design, faulty workmanship or faulty or improper materials, and any defect, omission or fault arising out of the installation or commission of the Goods and/or Services supplied by the Contractor.

**'Defects Liability Period'** means the period so described in Schedule 1.

**'Dispute Notice'** means a Notice given by one party to this Contract by the other party to this Contract that notifies of a claim and identifies a disputed issue.

**'Event of Insolvency'** means the occurrence of any one or more of the following events in relation to any person:

- (a) a receiver, manager, receiver and manager, trustee, administrator, controller or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;

- (c) any application (not being an application withdrawn or dismissed within five (5) Business Days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b);
  - (ii) winding up a corporation; or
  - (iii) proposing or implementing a scheme of arrangement;
- (d) a moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within five (5) Business Days;
- (e) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

**'Expert'** means an independent expert who has a working knowledge of the relevant field of work contemplated by the Contract and who is appointed under this Contract in accordance with the terms of this Contract.

**'Goods'** means the goods, the subject of the Contract or such of them as shall be described in the Order.

**'Government Agency'** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**'Government Authorisations'** means any consents, certificates, licences, permits or approvals issued by an Authority.

**'GST'** means the meaning of the GST Act.

**'GST Act'** means the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act).

**'Industry Standard'** means any applicable Legal Requirement or other applicable recognised standards accepted by practice in relation to the particular Site.

**'Insurance Policy'** means a binding written contract of indemnity with a recognised third party insurer indemnifying a party to this Contract for specified losses, events and circumstances.

**'Intellectual Property'** means any subject matter, whether tangible or intangible, that attracts, or is susceptible to protection by, Intellectual Property Rights.

**'Intellectual Property Rights'** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights

throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include:

- (a) all rights in all applications to register these rights; and
- (b) all renewals and extensions of these rights.

**‘Jurisdiction’** means the State of Queensland.

**‘Local Government’** means any local government established under the *Local Government Act 2009* including the Principal.

**‘Legal Requirement’** means any law, regulation, ordinance or statutory or regulatory requirement including any licence relating to the Goods or its use at the Site, including payment of taxes, fees and charges.

**‘Liabilities’** means the debts and other financial obligations of the Principal of any kind, including (without limitation) all current, actual, accrued or contingent liabilities.

**‘Month’** means a calendar month.

**‘Notice’** means a written notice, consent, approval, direction, order or other communication.

**‘Officer’** means any officer or person authorised by the Principal to act on its behalf for the purpose of the Contract.

**‘Order’** means a purchase order from the Principal to the Contractor requiring the supply of specific Goods and/or Services in the form outlined in Schedule 3.

**‘Party’** means the Principal or the Contractor, and Parties means both of them.

**‘Payment Terms’** means the terms (if any) for payment specified in Schedule 4.

**‘Period of Supply’** means the Period of Supply described in Schedule 1, as may be extended in accordance with this Contract.

**‘Personnel’** means:

- (a) in relation to the Contractor, any of its officers, employees, sub-contractor’s (including sub-contractor’s Personnel), agents and representatives involved either directly or indirectly in the supply, installation or commission of the Goods;
- (b) in relation to the Principal, any of its officers, employees, agents or representatives; and
- (c) in relation to a sub-contractor, any of its officers, employees, agents or representatives involved either directly or indirectly in the supply, installation or commission of the Goods.

**‘Personal Information’** has the meaning given in the Privacy Act.

**‘Privacy Act’** the *Privacy Act 1988* (Cth) as amended from time to time.

**‘Pollution’** means any hazardous substance, pollutant or contaminant regulated by an applicable government authority and also any other contamination or pollutant.

**‘PPSA’** means the *Personal Property Securities Act 2009* (Cth).

**‘Principal’** means the Redland City Council.

**'Redland Dealing Principles'** means the ethical and community dealing principles for the Principal as set out in Schedule 5.

**'Safety Management System'** means the policies, procedures and systems for safety prepared by the Principal or the Contractor and approved by the Principal from time to time, and includes but is not limited to any safety management plan.

**'Scope'** means the scope of work that is required to be performed to complete the Supply.

**'Security'** means the amount specified in Schedule 1 (if any).

**'Services'** means the whole of the services, tasks, work and requisites to be supplied, rendered or performed by the Contractor including all variations provided for by the Contract as more fully set out in the Contract.

**'Site'** means the site or sites so specified in Schedule 1 (if any).

**'Specification'** means any functional, performance, technical and/or exemplar specification, drawing and schedule forming part of the Contract.

**'Supply'** means the supply of the Goods, and if required by this Contract, installation and commission of the Goods, including all change orders instructed by the Principal.

**'Supply IP'** means all Intellectual Property (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Contract (including all Intellectual Property developed by the Contractor or a subcontractor in executing the Supply and any Intellectual Property in any technical material produced in respect of the Supply or the Goods).

**'Supply Program'** means a plan prepared by the Contractor and that is given to and approved by the Principal which outlines the time and manner in which the Goods are to be manufactured, supplied and, when applicable, installed by the Contractor (the dates must not be inconsistent with the dates set out in Schedule 1).

**'Tax, Taxes or Taxation'** means all forms of taxes, duties (including stamp duty), imposts, charges, withholdings, rates, levies or other governmental impositions imposed, assessed or charged by any Government Agency, together with all interest, penalties, fines, expenses and other additional statutory charges resulting from a failure to pay when due the full amount of any such imposition.

**'Vendor Panel'** means the portal available at [VendorPanel Marketplace](#).

**'Vendor Panel Information'** means the information concerning the Order:

- (a) as outlined on the Vendor Panel by the Principal; and
- (b) as inserted/inputted into the Vendor Panel by the Contractor.

## 2.2 Interpretation

In this Contract headings and guidance notes are for convenience only and shall not affect its interpretation except to the extent that the context otherwise requires:

- (a) reference to any statute or statutory provision shall include any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or such provision;



- (b) words denoting the singular shall include the plural and vice versa;
- (c) words denoting individuals and/or natural persons include those entities as well as joint ventures, body corporates and government agencies;
- (d) words denoting any gender shall include all genders;
- (e) references to parties, parts, clauses, annexures and schedules are references to parties, parts, clauses, annexures and schedules to this Contract as modified or varied from time to time;
- (f) references to any document, deed or agreement shall include references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time whether or not in writing;
- (g) references to any party to this Contract or any other document, deed or agreement shall include its successors, executors, administrators, substitutes (including without limitation, persons taking by novation and title) or permitted assigns;
- (h) all references to dates and times are to Australian Eastern Standard Time; and
- (i) all references to "\$" and "dollars" are to the lawful currency of Australia;
- (j) all references to other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning;
- (k) a reference to any thing (including without limitation any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (l) reference to a term of expression starting with a capital letter;
  - (i) which is defined in this Contract, has the meaning given to it in this Contract;
  - (ii) which is defined in the Corporations Act but is not defined in this Contract, has the same meaning as in the Corporations Act; and
  - (iii) which is defined in the GST law but is not defined in this Contract, has the same meaning as in the GST law;
- (m) reference to a clause or schedule shall be to a clause or schedule of this Contract;
- (n) an agreement, representation or warranty in favour of or on the part of two or more persons binds them severally unless expressly stated to the contrary;
- (o) reference to any law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;

- (p) where reference to a day on or by which something must be done is not a business day, that thing must be done on or by the following Business Day, unless stated to the contrary;
- (q) if there are any inconsistencies between the terms of this Contract and the Schedules, the terms of this Contract shall prevail;
- (r) guidance notes are for guidance only and do not form part of this Contract; and
- (s) this Contract may not be construed adversely to a party just because that party prepared it.

### **3. EVIDENCE OF CONTRACT**

- 3.1 The Contract shall be evidenced by the Letter of Acceptance/Formal Instrument of Agreement, Invitation to Tender, Specifications, General Conditions of Contract, Special Conditions of Contract (if applicable) and all things referred to therein.

The precedence of documents in the event of a conflict or inconsistency shall follow the sequence as detailed above.

- 3.2 Should any part of the Contract be held in law to be invalid, that part shall be severed from the Contract and the remainder of the Contract shall have full force and effect.

### **4. NOTICES**

- 4.1 Any notice or other communication under the Contract shall be in writing and signed and shall be given or served to the address stated in Schedule 1 by:

- (a) hand delivery or prepaid post to the address of the recipient specified in the Contract or at such other address as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified address: or
- (b) facsimile transmission to the facsimile number of the recipient specified in the Contract or at such other number as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified number.

- 4.2 A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.

### **5. OBLIGATIONS OF THE CONTRACTOR**

- 5.1 **The Contractor shall be deemed to have:**

- (a) examined carefully and to have acquired actual knowledge of the contents of all documents and any other information made available in writing by the Principal to the Contractor for the purpose of tendering;
- (b) obtained and properly examined all information relevant to the risks, contingencies and other circumstances that may have had an effect on its tender and which was obtainable by the making of reasonable enquiries; and
- (c) satisfied itself as to the correctness and sufficiency of its offer and that the Contract Price covers the cost of complying with all its obligations under the Contract.

- 5.2 Failure by the Contractor to have done all or any of the forgoing shall not relieve the

Contractor of its obligation to perform the Contract in accordance with the terms of the Contract.

5.3 Where a current, duly executed and authorized contract or procurement arrangement with the Principal exists and predates the receipt of an official Council Purchase Order the terms and conditions of that contract or procurement arrangement shall take precedence over the terms and conditions of the Purchase Order. Should any further conflict be found then the precedence of the documents shall be in accordance with clause 3.1 above.

5.4 The Contractor must:

- (a) if Schedule 1 states there is a Period of Supply, start supplying the Goods and/or Services from the Date of Supply, and complete the Supply (and if specified in Schedule 3, the installation and commission) of the Goods by the end of the Period of Supply;
- (b) if Schedule 1 does not state that there is a Period of Supply, supply, and if specified in Schedule 3, install and commission the Goods by the Date of Supply;
- (c) supply the Goods at the time, place and in the manner specified in Schedule 1 or as otherwise directed in writing by the Principal including but not limited to any delivery instructions provided by the Principal;
- (d) execute the Supply in accordance with the requirements of this Contract, with the professional skill, care and diligence expected of a professional contractor;
- (e) ensure that any Goods are of an acceptable quality (including being acceptable in appearance and finish, free from Defects, safe and durable) and if reference is made in this Contract to a particular brand or Contractor of materials, using the specified brand or Contractor and, unless otherwise stated, at its cost;
- (f) ensure that any Goods are fit for: all purposes for which the Goods are commonly supplied; any purpose the Contractor represents the Goods are fit for; and any purpose expressly specified by the Principal in this Contract;
- (g) ensure that the Goods are marked in accordance with the Principal's instructions;
- (h) immediately inform the Principal of any event or incident becoming known to the Contractor that will or is reasonably likely to prevent or materially limit the Contractor's ability to perform its obligations under this Contract;
- (i) ensure that due care is taken to protect and avoid any damage to the Site and not interfere with the Principal's activities at the Site;
- (j) carry out its obligations under this Contract in compliance with all environmental Legal Requirements and in an environmentally sustainably sensitive manner that does not degrade the quality of the environment;
- (k) comply with any instructions given by the Principal;
- (l) operate under the direction and control of the Principal;
- (m) comply with any Site policies, standards and procedures;
- (n) participate in consultations reasonably required by the Principal;
- (o) if required by the Principal, on request and within a reasonable time provide any information the Contractor has in its possession in connection with the execution of the Supply, report on any specific issue in connection with the execution of the

Supply and prepare and submit to the Principal regular progress reports at such intervals as the Principal may determine;

- (p) obtain and maintain any Government Authorisations necessary for the performance of the Supply;
- (q) obtain any approvals necessary for the performance of the Supply, including necessary approval from the owner of copyright of any drawings or documents required for the Supply and a royalty free licence to use the drawings or documents;
- (r) supply a reasonable number of copies of all drawings, plans, operational manuals and other documents necessary to operate or use the Goods;
- (s) comply with any Legal Requirements and provide material safety data sheets (if required by law or Industry Standard) and in the case of Goods containing foodstuffs, when delivered, comply with all relevant food and hygiene legislation and any applicable Industry Standard for transport, delivery and handling of foodstuffs;
- (t) rectify any Defects;
- (u) meet the cost of the rectification of any Defects;
- (v) provide a Supply Program;
- (w) endeavour to integrate the Supply with the work of other parties;
- (x) assist the Principal with the initial operation of the Goods and provide advice on the operation of the Goods at the cost of the Contractor;
- (y) maintain the Confidential Information including the terms of this Contract, the negotiations and information relating to this Contract and the information received as a consequence of this Contract;
- (z) not release Confidential Information to any party without first obtaining the Principal's written consent;
- (aa) not issue any public statement regarding the Principal or it's affairs without first obtaining the Principal's written consent; and perform and observe all its obligations under this Contract.
- (bb) The Contractor must fully comply with (and ensure the Contractor's Personnel fully comply with) all requirements or directions of Council relating to:
  - (i) where arranged and permitted by the Council, access to and use of Council's computer systems, programs and/or any arrangement Council has in place.

## **6. MANUFACTURE OF GOODS**

6.1 Where the Contractor is the manufacturer of the Goods:

- (a) the Contractor will ensure that the Goods do not have any safety defects, that the safety of the Goods is to the level persons are generally entitled to expect and that the Goods comply with all applicable safety standards; and
- (b) the Contractor will be solely liable if the Goods do have a safety defect and an individual suffers death or injury or their property is damaged or destroyed, in which case the Contractor will be solely liable to the individual (and any other person that suffers loss due to the death or injury of the individual) in respect of the loss or damage suffered.

6.2 The Contractor shall provide such evidence (and shall provide such access to premises and

other assistance) to the Principal and any person acting on the Principal's behalf as the Principal shall require to show that the Goods are manufactured, designed and supplied in accordance with this Contract (including, without limitation, clause 6.1) and the Contractor shall indemnify and keep the Principal indemnified for any loss or damage sustained by the Principal as a result of any breach of this Contract (including, without limitation, clause 6.1) including any cost, loss, damage or expense suffered or incurred by the Principal relating to or arising from a claim or action of any kind made against the Principal regarding the Goods.

## **7. OBLIGATIONS OF THE PRINCIPAL**

The Principal:

- (a) must pay the Contractor the Contract Price for the Goods, at the times and in the amounts calculated in accordance with clause 22;
- (b) must provide the Contractor with access to the Site;
- (c) may issue further instructions which must be acted upon by the Contractor;
- (d) may terminate this Contract in whole or in part if the Goods are lost, damaged, stolen or destroyed prior to delivery or acceptance by the Principal, are not delivered by the Date of Supply or there has been a breach by the Contractor of a warranty given in this Contract; and
- (e) if the Principal terminates this Contract pursuant to clause (d), in addition to any other rights the Principal may have at law, recover in full any part of the Contact Sum paid to the Contractor for the Goods.

## **8. COMPLYING WITH STATUTORY REQUIREMENTS**

The Contractor shall comply with the requirements of all applicable Acts, statutes and laws and all ordinances, rules, regulations, by-laws, local laws, orders and proclamations, throughout the performance of the Contract. If a requirement is at variance with a term of the Contract the Contractor shall notify the Principal in writing. If such a requirement necessitates a change to the work under the Contract, the Principal may order a variation. Except to the extent that a variation is ordered by the Principal as set forth above, the Contractor shall bear the cost of complying with the requirement.

## **9. ASSIGNMENT AND SUBCONTRACTING**

9.1 The Contractor shall not without the prior written approval of the Principal:

- (a) assign the Contract, or any part thereof or any payment hereunder. Approval to assign shall be on terms and conditions determined by the Principal.
- (b) subcontract the whole or any part of the Contract. Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

9.2 If the Principal does not provide a written approval of the assignment in accordance with Clause 9.1, then no assignment of this Contract by the Contractor can take place.

9.3 A change of control of the legal or beneficial ownership of the Contractor is deemed to be an assignment.

9.4 The Principal may assign or novate this Contract.

## **10. INDEMNITY**

10.1 The Contractor is liable for and shall indemnify and keep indemnified the Principal and its officers, employees, contractors, invitees and agents against:

- (a) any loss of or damage to the property of the Principal;
- (b) any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal or employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the sale or delivery of the Goods or Services by the Contractor or its employees, agents or subcontractors;
- (c) any breach of this Contract by the Contractor;
- (d) any wrongful or negligent act or omission on the part of the Contractor its employees agents representatives or sub-contractors in manufacturing, assembling, packing, delivering, performing or supplying the Goods or otherwise performing its obligations under this Contract;
- (e) any Goods that are or become defective or harmful to persons or property or are otherwise not in good condition;
- (f) loss or damage to the Goods or the Site where the loss or damage was directly or indirectly caused or contributed to by the Contractor;
- (g) loss, damage or expense arising out of or in respect of any action or claim for alleged infringement of any patent, copyright, registered design, trade mark or any other Intellectual Property Rights;
- (h) any sum of monies payable to any agent, indemnifier, sub-indemnifier, Contractor, consultants, subcontractor or other parties in connection with the Supply;
- (i) any Claims arising due to the Contractor's failure to pay its agents, contractors, Contractor's consultants or any other persons in connection with the Supply;
- (j) legal costs on a full indemnity basis incurred by the Principal due to any act, default or omission on the part of the Contractor; and
- (k) insurance premiums, taxes, fees and charges which become payable due to any act or omission of the Contractor.

10.2 Notwithstanding the preceding paragraph, the Contractor shall not be rendered liable for personal injury to or the death of any person or loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal nor for any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

10.3 The Principal may set off or deduct any sums payable for any of the reasons stated above from the amount otherwise payable to the Contractor under this Contract, and if the amount otherwise payable to the Contractor under this Contract is less than the amount payable by the Contractor to the Principal under this clause, the Principal may have recourse to the Security provided by the Contractor under clause 35, if any.

10.4 (Severance) If any part of this clause 10 is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law then that term or provision or part will, to that extent, be deemed not to form part of this Contract, but the validity and enforceability of the remainder of this Contract will not be affected.

## **11. INTELLECTUAL PROPERTY**

11.1 The Contractor warrants that neither the Goods nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trademark or name, copyright or other protected right and shall indemnify the Principal against any action,

suit, claim, demand, loss, proceeding, liability, cost or expense resulting from any alleged infringement.

11.2 Any and all Supply IP developed by the Contractor as a direct result of performing this Contract is the sole property of the Principal. In consideration of the payment of the Contact Sum the Contractor hereby assigns the Supply IP to the Principal.

11.3 The Contractor will execute all documents and do all things necessary to assign, protect and register the Principal's interest in the intellectual property.

## **12. WARRANTY AND RISK**

12.1 Where a particular brand of Goods is specified in the Contract, no other brand shall be supplied unless otherwise approved in writing by the Principal.

12.2 The Contractor warrants that:

- (a) all Goods delivered shall conform to the Specification and to samples provided (if any) specified in the Contract.
- (b) the Contractor shall employ only such persons as are careful skilled and experienced in their respective professions trades and callings who hold all necessary licences, permits and authorities required by law and whose standards of workmanship are entirely suitable for the performance of the Services and the requirements of the Contract.
- (c) the Goods will conform precisely in quality, quantity, specification, performance and description with this Contract, including;
  - (i) any drawings, specifications or other descriptions provided by or to the Principal including the drawings and specifications set out in Schedule 3;
  - (ii) any samples of the Goods supplied by the Contractor and inspected or approved by the Principal; and
  - (iii) any Industry Standard.
- (d) the Goods are:
  - (i) new;
  - (ii) free from all liens, charges and encumbrances of any kind;
  - (iii) the property of the Contractor;
  - (iv) fit for the purpose for which the Goods are supplied;
  - (v) of merchantable quality;
  - (vi) free from Defects;
  - (vii) will be packaged and labelled in accordance with all Legal Requirements; and
  - (viii) capable of safe and reliable operation;
- (e) the Goods do not infringe any patent, copyright, or registered design, trade mark or any intellectual property rights.
- (f) that any drawings, specifications or other descriptions provided by or to the Principal including the drawings and specifications in the Order or this Contract do not infringe

any patent, copyright, or registered design, trade mark or any intellectual property rights.

- (g) that any installation of the Goods will be:
  - (i) performed in accordance with the manufacturer's specifications, instructions from the Principal, and this Contract;
  - (ii) performed in a diligent manner by competent and qualified personnel; and
  - (iii) free from Defects.
- (h) that the Contractor possesses the particular skill, experience, ability and resources necessary to execute the Supply, has examined the Scope and any items supplied by the Principal, and is satisfied of their sufficiency for the purpose of complying with its obligations under this Contract.

12.3 The Contractor acknowledges it has fully investigated the risks and responsibilities involved in Supply of the Goods and/or Services and accepts any delays or cost increases that may arise from:

- (a) inclement weather;
- (b) the Site, surroundings and sub-surface conditions;
- (c) changes to any Legal Requirements;
- (d) the Contractor not receiving approvals from the Authorities;
- (e) delays on the part of persons for whom the Contractor is responsible, such as its Contractors,
- (f) delays in the supply of materials, goods, labour and equipment required to be supplied to or by the Contractor;
- (g) industrial dispute between the Contractor and its employees (other than a nation wide dispute); and
- (h) any other risk not listed above, the reasonable avoidance of is the responsibility of the Contractor.

### 13. SUPPLY OF GOODS AND SERVICES BY ORDER

13.1 The Contractor shall fulfil all Orders for Goods and/or Services placed by the Principal during the term or currency of the Contract.

13.2 Where the Contract is for the supply of Goods by reference to:

- (a) 'Variable Quantities', the Principal shall not be required to purchase all or any Goods listed **EXCEPT** such of the Goods as may be ordered by the Principal.
- (b) 'Approximate Quantities', the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.
- (c) 'Fixed Quantities', the Principal shall purchase the actual quantity shown.

13.3 The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.



- 13.4 Where the Contract is for the supply of Services by reference to a list of Services and prices in a Schedule to the Specification, the Principal shall not be required to take or accept all or any of the Services listed **EXCEPT** such of the Services as may be ordered by the Principal from time to time during the period of the Contract.
- 13.5 Where the quantity or value set out in any Schedule to the Specification is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under the Contract and the Principal shall not be required to take or accept the said nominated approximate quantity or value of Services.
- 13.6 The right is reserved for the Principal to order its requirements of any one type or item of the Services either at one time or in instalments or in such quantities as may be required from time to time.
- 13.7 Nothing herein contained shall oblige the Principal to take or accept all its needs or requirements of the Services solely from the Contractor nor shall be taken to confer any exclusive right upon the Contractor to provide the Services to the Principal. The Principal shall be free at all times to obtain the Services or any part of them from any other source provider or supplier thereof except Services the subject of an existing order to the Contractor.

#### **14. PACKAGING**

The Contractor shall ensure that all Goods are properly, safely and securely packaged and labelled for identification and safety.

#### **15. DELIVERY OF GOODS**

- 15.1 The Contractor shall deliver the Goods in full to the locations and at the times stated in the Contract or Order as the case may be. In this respect, time shall be of the essence of the Contract.
- 15.2 Upon it becoming evident to the Contractor that delivery of the Goods is likely to be delayed beyond the Date for Delivery, the Contractor shall promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to deliver by the Date for Delivery or from any other obligation under the Contract, unless the Principal otherwise agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.
- 15.3 The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing.

#### **16. EXPENSES OF DELIVERY**

Unless otherwise provided in the Contract, the Contractor shall pay all packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of Goods and the return of Goods wrongly supplied and all packaging.

#### **17. RECEIPT, TITLE AND ACCEPTANCE OF GOODS**

- 17.1 Delivery and receipt of Goods shall not of itself constitute acceptance of the Goods by the Principal, with acceptance being subject to the approval of the Officer.
- 17.2 The Principal may reject the Goods if the Contractor supplies or installs Goods not complying with this Contract or if the Contractor has breached any warranty in this Contract. The Principal shall not be deemed to have accepted any Goods until the Principal has had a reasonable time to inspect them following delivery, if later, within a reasonable time after delivery, any latent defect in the Goods has become apparent.
- 17.3 Where the Goods are subject to Acceptance Testing, if the Principal is not satisfied with the

results of the Acceptance Testing, the Principal may either

- (a) reject the Goods; or
  - (b) require the Contractor to take steps to rectify the Goods in accordance with clause 17.7.
- 17.4 If the Goods are rejected, title to and risk in the Goods will revert to the Contractor. The Contractor must immediately remove the Goods and make good any damage to the Site at the Contractor's cost. This is without prejudice to any other rights the Principal may have under this Contract.
- 17.5 Should the Contractor fail to duly and properly remove, replace or rectify the rejected Goods within the time specified in the notice of rejection the Principal shall be entitled to:
- (a) exercise a general lien upon the Goods to cover all costs, fees and expenses of the Principal; and
  - (b) sell the rejected Goods; or
  - (c) have the Goods redelivered at the Contractor's risk and expense to the Contractor's premises, where the Contractor shall afford every facility to accept redelivery of the rejected Goods.
- 17.6 The Principal shall not be responsible for the care or custody of any rejected Goods.
- 17.7 The Contractor must, in the Company's absolute discretion, promptly replace, repair, make good or reimburse to the Company the cost of replacing, repairing or otherwise making good any Defects with, loss of, or damage to, the Goods. Nothing in this clause 17.7 will constitute any extension of the Period of Supply.
- 17.8 The Principal shall be deemed to have accepted the Goods when the Officer notifies the Contractor that the Goods have been accepted or when after the lapse of 14 days the Principal retains the Goods without notifying the Contractor that the Goods have been rejected **PROVIDED THAT** where it is a term of the Contract that the Goods be installed and/or commissioned that the Principal shall not be deemed to have accepted the Goods unless the Goods are satisfactorily installed and/or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.
- 17.9 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or its agents or employees.
- 17.10 Nothing in this clause 17 shall absolve the Contractor from responsibility or liability in respect of the Supply or limit any warranties in respect of the Goods at any stage and shall not prejudice or limit the Principal's rights in accordance with the remainder of this Contract.
- 17.11 Where the Contractor fails to deliver the Goods by the Date for Delivery, or where Goods are rejected and the Contractor fails to replace the rejected Goods or to deliver Goods conforming to the Contract forthwith upon written notice to do so, the Principal;
- (a) shall have the right to purchase from another supplier substitute Goods of the kind and quality ordered; or
  - (b) where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of the Principal are most suitable, even though such Goods be of a superior kind and quality.
  - (c) may notify the Contractor of the deficiency, and require the Contractor to forthwith:

- (i) remove the deficient Goods from the Principal's premises and at the Contractor's expense either to replace them with Goods conforming to the Contract or to rectify them to conform; or
- (ii) refund the price paid and thereupon to remove the deficient Goods from the Principal's premises;

## **18. DEFECT LIABILITY PERIOD**

18.1 The Defect Liability Period commences on the later of the following:

- (a) the Date of Supply;
- (b) the end of the Period of Supply (if any); or
- (c) the date that the Acceptance Testing (if any), in the reasonable opinion of the Principal, is satisfactorily completed.

18.2 During the Defect Liability Period, the Contractor must at their cost rectify all Defects, and the Defects must be rectified within a reasonable time.

18.3 The Principal may carry out, or have others carry out, rectification work at the Contractor's cost if the Contractor does not rectify a Defect in accordance with clause 18.2 and all reasonable costs and expenses suffered or incurred by the Principal under this clause 18.3 will be a debt due from the Contractor to the Principal. If the Principal carries out or has others carry out the rectification work pursuant to clause 18.3, the Contractor remains responsible for the Goods (including the rectification work) in accordance with this Contract and the Contractor is not entitled to make, and the Principal is not liable for, any Claim in relation to that rectification work.

18.4 The Defect Liability Period ends on the earlier of the following:

- (a) end of the Defect Liability Period; or
- (b) when the Contractor receives written Notice from the Principal that the Principal is satisfied with the Supply.

18.5 The Contractor will ensure that the Goods carry any applicable manufacturer's warranty any shall obtain for the Principal the benefit of any manufacturer's warranty.

18.6 Within 14 days of request, the Contractor will assign to the Principal the benefit of any warranty or guarantee that the Contractor has received from any manufacturer (whether under contract or by notification or operation of law).

## **19. FORCE MAJEURE**

19.1 In this clause "Event of Force Majeure" means an act of God, fire, unusual inclement weather conditions, natural disasters, war, an act of terrorism, insurrection, civil unrest, state of emergency, or industrial dispute or the Site being temporarily closed due to circumstances beyond the reasonable control of the Principal.

19.2 Where the Contractor is unable or fails (for whatever reason) to supply and provide the Goods and/or Services at any time or in any place the Principal may without being liable in any way to the Contractor obtain or acquire such Goods and/or Services as it requires during the Event of Force Majeure or at that time or in that place (as the case may be) from any other source Contractor or provider thereof.

19.3 If a party is prevented, beyond its control, from performing its obligations under this Contract by reason of an Event of Force Majeure, then that party may as soon as practical give Notice to the other party.

- 19.4 Upon giving Notice, the party affected by the Event of Force Majeure will not while prevented from performing its obligation by the Event of Force Majeure, be in breach of its obligations under this Contract.
- 19.5 If a party is prevented from performing its obligation for longer than 3 months, either party may by 7 Days written notice terminate this Contract.

## **20. VARIATION TO CONTRACT TERMS**

- 20.1 The Principal may give Change Orders to the Contractor relating to the Supply.
- (a) a Change Order may:
    - (i) increase, decrease, or omit any part of the Supply;
    - (ii) alter the character and nature of the Supply;
    - (iii) amend dates under the Contract;
    - (iv) instruct the replacement or reinstallation of the Goods; or
    - (v) other revisions to the Supply or any part of the Supply.
  - (b) If a Change Order is given, the Principal will vary payment to the Contractor and such payment may increase or decrease, and will be determined by assessing the impact of the intended variation to the Supply.
  - (c) The impact of the intended variation upon the Supply and its relation to the payment to the Contractor must be valued by agreement between the parties.
  - (d) Subject to an agreed revision of the amount to be paid to the Contractor, the Contractor must comply with any Change Orders as soon as possible.
  - (e) In the event that the parties are unable to reach an agreement as to the revised payment to the Contractor, the revised payment will be determined by the Principal.

## **21. SPECIAL PRICING AND OFFERS**

- 21.1 Any special price, licence fee, rate or charge in relation to the Goods or Goods of a like nature which is offered by the Contractor to any Local Government and which is lower than under the Contract shall be made available to the Principal and all purchasers.
- 21.2 The Contractor, through the period within which that special price, licence fee, rate or charge is being offered, shall only be bound to comply with the above, where the purchase is of similar circumstances and under substantially the same terms and conditions.

## **22. PAYMENT**

- 22.1 Unless otherwise provided in the Contract, the Principal shall make payment 30 days from the date of receipt of a valid, correctly submitted invoice provided the goods have been received by an Officer in accordance with this Contract.
- 22.2 All invoices submitted for payment shall be fully tax compliant and quote an official Principal order number. Failure to quote an official Principal order number shall prevent payment being made until such time as an official Principal order number is provided. The Principal shall make every effort to notify suppliers and request the provision of an order number where invoices are submitted and fail to conform with the above requirement.
- 22.3 Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or avoid the Contract.

- 22.4 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price unless otherwise provided in the Contract.
- 22.5 All invoices for payment shall be delivered to the attention of “Accounts Payable” - Redland City Council, PO Box 21, CLEVELAND, QLD 4163.

Alternatively, invoices can be emailed to: [accountspayable@redland.qld.gov.au](mailto:accountspayable@redland.qld.gov.au).

### **23. SUSPENSION OF PAYMENTS**

- 23.1 At any time prior to the Date of Supply and during the Period of Supply, the Principal may instruct the Contractor to suspend all or part of the Supply.
- 23.2 If Supply is suspended in accordance with clause 23.1, the Contractor is entitled to claim reasonable costs incurred as a result of the suspension unless that suspension is:
- (a) necessary by reason of the nature of the Supply;
  - (b) necessary for the safety of the Supply (including the safety of the Goods);
  - (c) caused by the Contractor failing to comply with any Legal Requirements or Site policies, standards and procedures;
  - (d) caused by the Contractor failing to comply with a direction given by the Principal;
  - (e) due to an act of neglect, default or omission by the Contractor; or
  - (f) to enable the Principal to inspect the Goods.
- 23.3 Should the Contractor refuse or neglect to carry out the instructions of the Principal in regard to any matter connected with the Contract, the Principal may suspend all payments to the Contractor until such instructions have been complied with.

### **24. DEFAULT**

- 24.1 The Contractor commits an act of default if the Contractor:
- (a) fails to perform or observe any term or condition under this Contract;
  - (b) suspends the Supply without reasonable cause;
  - (c) fails to maintain the Supply in accordance with the Supply Programme;
  - (d) fails to Supply the Goods on or before the Date of Supply or the extended Date of Supply as the case maybe;
  - (e) has the Goods rejected by the Principal in accordance with the terms of this Contract;
  - (f) prior to delivery and acceptance of the Goods by the Principal the Goods are lost, stolen damaged or destroyed;
  - (g) fails to comply with a written notice of the Principal;
  - (h) fails to obtain, renew or otherwise cancels any Insurance policy that the Contractor is required to obtain under this Contract;
  - (i) an Event of Insolvency occurs;
  - (j) the party is taken under the Corporations Act to have failed to comply with a statutory demand; or

- (k) the party commits an act of bankruptcy, becomes bankrupt or unable to pay its debts or suspends payment of its debts within the meaning of the *Bankruptcy Act 1966* (Cth).

24.2 If the Contractor has committed an act of default (other than an act of default set out in clauses 24.1.(i), (j) or (k)), the Principal may issue a Default Notice.

24.3 If the Contractor does not rectify the default on or before fourteen (14) days after receipt of the Default Notice or the Contractor has committed an act of default as specified in clauses 24.1(i), (j) or (k), the Principal may, without prejudice to any other rights that the Contractor may have, do any of the following:

- (a) terminate this Contract;
- (b) seize and take ownership of the Goods;
- (c) authorise or employ others to Supply or install the Goods;
- (d) deduct any costs, losses or damages suffered by the Principal as result of the default from any amount payable to the Contractor;
- (e) have recourse to the Security;
- (f) claim damages for breach of contract and any Consequential Losses and direct losses;
- (g) request that the Contractor remove all property of the Contractor from the Site; or
- (h) remove all property of the Contractor from the Site at the cost of the Contractor;

and for the avoidance of doubt each of these remedies is a separate remedy and where the Principal considers it appropriate (in its absolute discretion), it may avail itself of more than one of the available remedies in this clause.

## **25. DEDUCTIONS OF CHARGES OR DEBTS**

The Principal may deduct from monies due to the Contractor under the Contract or on any other account, any monies due from the Contractor to the Principal, under the Contract or on any other account, and if those monies are insufficient, the Principal may have recourse to any security under the Contract.

## **26. TIME**

26.1 The Contractor must supply the Goods on the Date of Supply. Time is of the essence of this Contract in respect of the Period of Supply.

26.2 If a Period of Supply is nominated the Contractor must supply the Goods on the Date of Supply and complete the Supply by the end of the Period of Supply.

## **27. EXTENSION OF DATE OF SUPPLY:**

27.1 The Contractor may apply, in writing, for an extension of the Date of Supply or the Period of Supply if the Contractor is delayed in delivering Supply because of variation to this Contract or due to a suspension of the Supply by the Principal.

27.2 The Principal may grant an extension of time to the Date of Supply or the Period of Supply if it considers the Contractor's application is appropriate at the Principal's absolute discretion.

## **28. GOODS AND SERVICES TAX**

28.1 Where the supply of Goods or any part thereof is a taxable supply under the GST Act the

Contract Price shall be inclusive of all applicable GST at the rate in force for the time being.

28.2 If the Principal makes a payment in respect of Goods or Services supplied by the Contractor from a third party and for which the Contractor is entitled to claim an input tax credit, the amount will include any GST or GST adjustment together with sufficient evidence to enable the Principal to obtain any input tax credit.

28.3 References in this clause 28 to GST, or Tax Invoice and/or input tax or tax invoice and income tax have the meanings given in the GST Act.

## **29. STAMP DUTY**

The Contractor shall pay all stamp duties in connection with the Contract.

## **30. CUSTOMS AND EXCISE DUTIES**

30.1 The Contract Price shall, unless otherwise stated, be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the date of closing of tenders.

30.2 The Contractor shall, if so requested, provide information as to the Customs Tariff classification, the amount of duty payable, its application to the Contract Price and date or proposed date of importation.

30.3 The Contractor shall:

- (a) if the Principal so requires, pay any dumping duty or security therefore which may be levied or demanded under the *Australian Customs Tariff (Anti Dumping) Act 1975*, in respect of the Goods supplied under the Contract direct to the Principal or to the Australian Customs Service as the case may be.
- (b) indemnify and keep indemnified the Principal against any liability for such dumping duty or security.

## **31. SETTLEMENT OF DISPUTES**

31.1 The parties agree to use mediation and negotiation to resolve any dispute or unresolved claim arising out of or relating to this Contract or any Order (including any breach or termination of this Contract or any such Order) ("the Dispute").

31.2 If a party believes there is a Dispute, it may give a Dispute Notice to the other party detailing the nature of the Dispute. If the Dispute is not resolved to the satisfaction of the parties within ten (10) Business Days of receipt of such notice, either party may request that the Dispute be referred to arbitration to be effected:

- (a) by an arbitrator mutually agreed upon between the parties; or
- (b) in default of such mutual agreement, by an arbitrator appointed by the Queensland Chapter Chairman of the Institute of Arbitrators and Mediators Australia.

In such a case, the Dispute shall be conducted in accordance with the Rules for the Conduct of Commercial Arbitration for the time being of the Institute of Arbitrators and Mediators Australia.

31.3 The referral of the Dispute to arbitration (or any other form of dispute resolution), shall not prevent either party commencing court proceedings relating to the Dispute where the party seeks urgent interlocutory relief.

31.4 Notwithstanding the existence of a Dispute, each party shall continue to perform its obligations under this Contract and the Order in dispute.

31.5 The parties acknowledge and agree that nothing in this clause shall be construed as:

- (a) compelling the parties to refer any Dispute to arbitration, mediation or any other form of dispute resolution; or
- (b) requiring the Principal to seek to negotiate all disputes or unresolved claims in relation to any breach by the Contractor of its obligations under this Contract or any Order prior to or in order to exercise any of its rights under clause 14 or any other provision of this Contract or the Order in question.

## **32. TERMINATION OF CONTRACT**

32.1 Subject to Clause 34, if the Contractor fails to duly and punctually observe, perform and comply with any term, condition or stipulation on the part of the Contractor contained or implied in the Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe perform and comply with such term condition or stipulation or otherwise to remedy the breach; or

- (a) If the Contractor (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary administration; or
- (b) If the Contractor (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a Deed of Arrangement for the benefit of its creditors; or
- (c) If the Contractor assigns or subcontracts the Contract or any part thereof without the prior written consent of the Principal; or
- (d) If the Contractor includes in its offer any statement, representation, fact, matter, information or thing which is false untrue incorrect or inaccurate, whether known to the Contractor or not;

**THEN** and in any of the said cases, if the Principal considers that damages may not be an adequate remedy, the Principal may by notice in writing to the Contractor forthwith terminate the Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete the Contract.

32.2 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the abovementioned matters and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.

## **33. TERMINATION FOR CONVENIENCE**

33.1 Notwithstanding any other provision of this Contract, the Principal may in its sole and absolute discretion and for any reason terminate this Contract immediately upon giving notice to the Contractor or at a future date specified in the notice.

33.2 If this Contract is terminated pursuant to clause 33.1 the Principal (without prejudice to any other rights or remedies the Principal has) must pay the Contractor as full and final compensation;

- (a) the portion of any Contract Price due to the Contractor for any Supply executed prior



to the date of termination;

- (b) the cost of materials reasonably ordered by the Contractor for the Supply, which the Contractor is legally liable to accept, but only if the materials become the property of the Principal upon payment;
- (c) any reasonable cancellation costs incurred by the Contractor as a result of terminating or cancelling any subcontracts; and
- (d) the reasonable costs of complying with any directions given by the Principal upon, or subsequent to, termination.

For the avoidance of doubt, the Contractor will not be entitled to any additional payment for loss of profits or any other amount on account of unperformed Supply.

33.3 Except as provided in clause 33.2, the Contractor is not entitled to make, and the Principal is not liable for, any claim as a consequence of, or in connection with, this Contract, the Supply, or the termination, but any rights of the Principal arising from prior breaches by the Contractor are not affected.

33.4 If this Contract is terminated pursuant to clause 33.1 then:

- (a) the Contractor must immediately cease executing the Services, not place any further orders or enter into any further contracts or binding arrangements in respect of the Services, and do its best to minimise the costs of ending this Contract;
- (b) the Contractor must comply with any direction by the Principal including to:
  - (i) protect property in the possession of the Contractor in which the Principal has or may acquire an interest;
  - (ii) assign or novate to the Principal all rights and benefits under any subcontracts and terminate any other subcontracts as the Principal requires;
  - (iii) provide the Principal with possession of materials, which are required for the Services which have become the property of the Principal including any Services IP; and
  - (iv) deliver to the Principal all property, documentation or information provided to the Contractor by the Principal in connection with the Contractor carrying out the Services.

33.5 The Contractor must deliver to the Principal an invoice setting out the Total Service Charges payable calculated pursuant to clause 33.2. The invoice must identify separately the Service Charge in respect of each Service.

#### **34. NO WAIVER**

34.1 No forbearance, delay or indulgence by the Principal in enforcing the provisions of the Contract shall prejudice, restrict or limit the rights of that party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

34.2 No waiver is effective unless it is in writing.

34.3 The waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose of which it is given.

#### **35. SECURITY FOR PERFORMANCE**

35.1 Where applicable, and within the time limited in Schedule 1, the Contractor shall deposit with the Principal the Security in the amount and in the form (if any) set out in Schedule 1

- 35.2 The Principal shall hold such Security as security for the due and proper performance and completion of the Contract, or until the Contract has been terminated in which event the Security shall become forfeited to the Principal.
- 35.3 If the Contract has not been terminated and Orders are not completed in accordance with the terms of the Contract, then the amount of loss and damage (if any) to the Principal caused thereby may be deducted from the Security and appropriated by the Principal.
- 35.4 Where the Contractor fails to deposit the Security within the said period the Principal may give to the Contractor notice in writing terminating the Contract and the Contract shall thereupon be deemed to be discharged.
- 35.5 On or before seven (7) days after the last of:
- (a) the Date of Supply;
  - (b) the Period of Supply end date;
  - (c) the date that the Acceptance Testing, in the opinion of the Principal, is satisfactorily completed; or
  - (d) the end of the Defects Liability Period

the Principal must return the Security to the Contractor if the Principal has not had recourse to the Security under this Contract.

## **36. POWER TO ACT FOR THE PRINCIPAL**

Anything to be done or performed by the Principal may be done and performed by any person duly authorised by the Principal.

## **37. INSURANCE**

- 37.1 Before commencing the Supply and without limiting its obligations and responsibilities, the Contractor, for their respective rights interests and liabilities, shall effect and keep in effect during the currency of the Contract insurance policies on terms and conditions acceptable to the Principal covering all the following:
- (a) insurance to cover the value of the Goods, such insurance must remain in place until title to the Goods has passed;
  - (b) public liability insurance for an amount of not less than \$10,000,000 in relation to one incident;
  - (c) general and products liability insurance (including liability arising from unregistered vehicles, goods sold or supplied and property) for an amount of not less than \$10,000,000 in relation to one incident;
  - (d) insurance against any loss, claim or damage of the Contractor's employees whether arising at common law or under any statute relating to workers' compensation or employers' liability and occupational/ industrial disease;
  - (e) any other insurance which is required by law; and
  - (f) legal costs on a full indemnity basis.
- 37.2 The insurance policies under this Contract are primary, and not secondary, to the indemnities referred to in this Contract. It is the intention of the Parties that the insurer cannot require any Party to exhaust a claim under an indemnity referred to in this Contract before the insurer considers or pays the relevant claim.

- 37.3 The insurance policies shall contain a cross-liability clause and otherwise be in terms, and effected with a reputable insurance company.
- 37.4 The Contractor shall lodge certificates of proof of the required insurance policies with the Principal before the delivery/ commencement of the Goods/Services provision and at such other times as the Principal may require.

### **38. INDUSTRIAL AWARDS**

- 38.1 With respect to all work done in Queensland under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Goods and/or Services and the work to be done under the Contract.
- 38.2 Failure by the Contractor to comply with sub clause 38.1 hereof shall entitle the Principal by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.

### **39. RELATIONSHIP OF PARTIES**

In providing the relevant Services to the Principal, the Contractor is acting as an independent contractor. This Contract does not constitute any partnership, trust, agency, joint venture or employment relationship between the parties. The Contractor does not have the authority to incur any obligation on behalf of the Principal.

### **40. ENTIRE AGREEMENT**

- 40.1 This Contract contains the entire understanding and agreement of the parties concerning its subject matter, unless there is a more specific contract in writing between the parties specifically regulating the contract activities, for example prequalified supplier arrangements and Qld Local Buy arrangements.
- 40.2 Subject to clause 40.1; The Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the Principal and the Contractor relating to the Goods and/or Services.
- 40.3 Any variation to this Contract must be in writing and be signed by both parties, other than Charge Orders.

### **41. RIGHTS AND REMEDIES**

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether at law or under the Contract.

### **42. SEVERANCE**

If any clause in this Contract is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law then that term or provision or part will, to that extent, be deemed not to form part of this Contract, but the validity and enforceability of the remainder of this Contract will not be affected.

### **43. ACKNOWLEDGEMENTS**

- 43.1 By entering into this Contract, except to the extent stated in this Contract, the Contractor does not rely on any representation, warranty, condition or other conduct which may have been made by the Principal or any person purporting to act on behalf of the Principal.
- 43.2 The Contractor has read this Contract and has made all necessary and independent inquiries in relation to all matters relevant to the entry into, and the performance of the Contractor's obligations under, this Contract.

#### **44. GIVING EFFECT TO THIS CONTRACT**

Each Party must take any reasonable steps (including executing any document), and must ensure that its personnel take any reasonable steps (including executing any document), that the other Party may reasonably require to give full effect to this Contract.

#### **45. SURVIVAL OF INDEMNITIES**

The indemnities provided in this Contract are continuing obligations and remain in full force and effect following termination, completion or expiration of this Contract or the finalisation of the Supply.

#### **46. NO MERGER**

The indemnities, covenants, warranties and other provisions of this Contract will not merge on completion of the Contract unless expressly set out in this Contract.

#### **47. CONFIDENTIALITY**

47.1 No party shall disclose any Confidential Information of the other party disclosed in the negotiating or performance of this Contract unless:

- (a) it obtains that party's consent in writing;
- (b) the disclosure is required by law, a court or a regulatory body;
- (c) the information has become in the public knowledge other than as a result of a breach of this clause;
- (d) the information is disclosed to the advisers, employees and financiers of the party on a confidential basis.

47.2 Before making any disclosure pursuant to clause 47.1 the party seeking to make the disclosure ("**Disclosing Party**") must:

- (a) give the other party details of the reasons for the disclosure and a copy of the information that the Disclosing Party proposes to disclose;
- (b) where reasonably possible, provide the other party with sufficient notice to enable the other party to seek a protective order or other remedy; and
- (c) provide the other party with all assistance and co-operation which the other party reasonably considers necessary to prevent or limit that disclosure including by making such amendments (if any) requested by the other party to the terms of the disclosure.

#### **48. PRESS AND PUBLIC ANNOUNCEMENTS**

48.1 The Contractor acknowledges that in order to protect its reputation and goodwill, it is of critical importance for the Principal to manage any press or public announcements relating to the Principal's business and/or operations. Accordingly, the Contractor agrees that the Contractor will notify the most senior contact of the Principal that the Contractor is reasonably able to contact immediately in the event of:

- (a) any incident which involves or might have involved a risk to the health and safety of any person in any way connected with the Principal, its customers, staff or assets; or
- (b) any incident which could reasonably be expected to have a negative impact on the reputation or goodwill of the Principal.

48.2 The Contractor will make no statement or comment to the press, public or any other person

(other than to the Principal) in connection with any incident or potential incident of a type described above and will refer all requests for such statement or comment to the Principal.

- 48.3 The Contractor will promptly provide all support and assistance reasonably requested by the Principal in connection with any such incident or potential incident.

## 49. INFORMATION PRIVACY

- 49.1 Where the Contractor or its subcontractors have access to or are responsible for holding Personal Information, the Contractor must:

- (a) Comply with the Privacy Act as if the Contractor were the Principal; and
- (b) Ensure that the Personal Information is protected against loss, unauthorised access, use, modification or disclosure, and against other misuse; and
- (c) Not use the Personal Information other than for the purpose of the Contract, unless required or authorised by law; and
- (d) Not disclose the Personal Information without the written agreement of the Principal, unless required or authorised by law; and
- (e) Not transfer the Personal Information outside Australia without the written consent of the Principal; and
- (f) Ensure that its personnel do not access, use or disclose the Personal Information other than in the performance of their duties, and
- (g) Immediately notify the Principal if it becomes aware that a disclosure of Personal Information is, or may be, required or authorised by law; and
- (h) Fully cooperate with the Principal, to enable the Principal to respond to applications for access to, or amendment of, a document containing an individual's Personal Information and to privacy complaints; and
- (i) Comply with such other privacy and security requirements as the Principal reasonably advises the Contractor from time to time.

- 49.2 Where the Principal is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Principal may at any time require the Contractor to make its subcontractors aware of its obligations, in accordance with this Clause including, when requested by the Principal, requiring any subcontractor to promptly sign a privacy undertaking in a form approved by the Principal.

## 50. NEW / INNOVATIVE SOLUTIONS

- (a) **Innovation** - During the Term of this Contract, the parties may separately or together develop a solution or solutions ("**New/Innovative Solutions**") which may include situations in which:
  - (i) the Contractor makes new goods and/or services available on a commercial basis and such new goods and/or services are:
    - (A) a viable substitute for any of the Goods/Services; or
    - (B) ancillary to or broadly related to the Goods/Services; and/or
  - (ii) either or both of the parties have developed an innovation(s) to improve value for money outcomes to the Principal including but not limited to

improved services outcomes for ratepayers/Principal, efficiency savings and/or cost reductions.

- (b) Development
  - (i) During the development of any New/Innovative Solutions, the Principal may:
    - (A) require a business case to be produced; and
    - (B) consider the offer of an additional period (for example, where there are significant capital/other costs associated with the New/Innovative Solutions).
  - (ii) If the parties wish to include any New/Innovative Solutions in this Contract from time to time, the parties shall work collaboratively to attempt to reach in-principle agreement in relation to:
    - (A) any changes required to the Contract Price(s), the Specifications, the key performance indicators and the reporting requirements to implement the New/Innovative Solutions;
    - (B) whether the Intellectual Property Rights in the New/Innovative Solution are to vest in the Contractor, the Principal or both parties jointly; and
    - (C) the date on which the changes to implement the New/Innovative Solutions would take effect.
  - (iii) Each party shall bear its own costs associated with the initiation, development and implementation of any New/Innovative Solutions (irrespective of whether those New/Innovative Solutions are implemented), unless otherwise agreed in writing by the Principal and its Officer on a case by case basis.
- (c) Implementation
  - (i) New/Innovative Solutions will be binding on the parties once ("**Implementation Agreement**"):
    - (A) the matters in clause (b)50(b) have been determined by the parties; and
    - (B) the implementation of the New/Innovative Solutions has been recommend by the Management Team and approved in writing by the Principal's Contract Authority and the Contractor's Representative.
  - (ii) As of the date specified in the Implementation Agreement, all such New/Innovation Solutions shall be deemed to be:
    - (A) Goods/Services to which this Contract applies; and
    - (B) incorporated into the Schedules to this Contract (as applicable).

## 51. BUSINESS ETHICS

51.1 **The** Principal aims to achieve the highest standards of integrity and accountability when doing business, working with the community and delivering services with the same standards expected from our business clients, suppliers and service providers. This is in line with the Queensland Government's *Local Government Act 2009* and the Principal's Employee Code of Conduct, with a view to providing the best possible business practices

and community, client and supplier outcomes.

51.2 To maintain this business ethics, the Contractor must:

- (a) comply with the Redland Dealing Principles;
- (b) respect the Redland Dealing Principles and the Principal's ethical obligations;
- (c) not pressure Officers to overlook ethical obligations;
- (d) avoid collusion and unfair practices;
- (e) disclose likely conflicts of interest;
- (f) maintain confidentiality of information that is confidential;
- (g) provide accurate information; and
- (h) help deter unethical practices and/or fraud by promptly reporting your concerns.

51.3 Unethical conduct or fraud is not acceptable and should be reported to the Principal immediately.

51.4 Compliance with the Redland Dealing Principles is an essential term of this Contract

## **52. DEVELOPMENT OF COMPETITIVE LOCAL BUSINESS AND INDUSTRY**

52.1 In line with the Principal's Corporate Procurement policy, the Principal encourages the development of competitive local businesses and will endeavour to promote and support competitive local business and industry in its procurement.

52.2 In addition to price, performance, quality and suitability, the Principal may also consider the following factors when conducting its procurement:

- (a) economic growth for the region; or
- (b) readily available goods, services and support; and

the benefit to the Principal of contracting with local suppliers and the associated local commercial transactions that flow from that contracting.

52.3 The Principal acknowledges that due to its location in the South-East Queensland metropolitan area, and as a significant purchaser of goods and services from the private sector, a "local" business for certain procurement will vary and may be business based in the South-East Queensland region, Queensland or interstate.

52.4 Further, it is accepted that local government can directly and indirectly benefit local business by procuring from a local, Queensland or interstate based supplier by utilising whole-of-government arrangements to access local and other domestic suppliers of works, goods or services. This strategy will encourage local business to compete within a wider market through the whole-of-government tendering platforms

## **53. INDIGENOUS AND SOCIAL ENTERPRISE PROCUREMENT REQUIREMENT**

53.1 The Principal actively encourages Indigenous entrepreneurship and business development to provide Indigenous Australians, particularly the Quandamooka Peoples with more opportunities to participate in the economy and encourages Contractors to:

- (a) Purchase from Indigenous and Social Enterprises (being an organisation that is 50 per cent or more Indigenous owned and/or Social Enterprise organisation that is operating a business); and

- (b) Employment of Indigenous Australians and/or from a Social Enterprise organisation, in the delivery of any resultant contract.
- 53.2 Purchases from an Indigenous and/or Social Enterprise organisation may be in the form of engagement as a sub-contractor and/or use of Indigenous and/or Social Enterprise suppliers in the Tenderers supply chain.
- 53.3 The Principal encourages Contractors to demonstrate socially positive outcomes such as support for socially beneficial programs or operations as a social enterprise (job creation, training, provision of local services, etc.) are encouraged. Social enterprises are defined as having economic, social, cultural or environmental missions that are consistent with a public or community benefit. As examples, such enterprises may include microenterprises, community run organisations and Indigenous owned corporations.



## Schedule 1 Contract Summary

{Complete if Necessary as Per Council's Purchase Order}

<b>1.</b>	<b>Notices</b>		
	<b>Principal</b>	<b>Physical address:</b>	
		<b>Mailing address:</b>	
		<b>Fax:</b>	
		<b>Email:</b>	
	<b>Principal's Representative</b>	<b>Physical address:</b>	
		<b>Mailing address:</b>	
		<b>Fax:</b>	
		<b>Email:</b>	
	<b>Contractor</b>	<b>Physical address:</b>	
		<b>Mailing address:</b>	
		<b>Fax:</b>	
		<b>Email:</b>	
	<b>Contractor's Representative</b>	<b>Physical address:</b>	
		<b>Mailing address:</b>	
		<b>Fax:</b>	
		<b>Email:</b>	
<b>2.</b>	<b>Frequency of Meetings</b>		
<b>3.</b>	<b>Contract Rates</b>		
<b>4.</b>	<b>Site</b>		
<b>5.</b>	<b>Date for Delivery</b> (Clause 15)		
<b>6.</b>	<b>Period of Supply</b> (if any) (Clause 5.4(a))		
<b>7.</b>	<b>Defects Liability Period</b> (Clause 18)		_____ months from the end of the Period of Supply

## **Schedule 2 Special Conditions**

{Insert if Requested to be agreed in writing between the Parties}

**Schedule 3 Order Form**

{Insert if Requested}

**Schedule 4 Payment Terms**

{Insert if Requested and if different from the Purchase Order}

## Schedule 5 Redland Dealing Principles

### Additional Definitions applicable to this Schedule

The following additional definitions shall apply to this Schedule:

**"Redland"**: means the Principal as defined under the Agreement to which this Schedule is attached.

**"Redland Dealing Principles"** the Ethical Dealing Principles of Redland as set out in this Schedule;

**"Inappropriate Person"** any person or entity:

- (a) where one third of its revenue is derived from the manufacture and sale of armaments and/or pornographic material and any person or entity currently engaged in:
  - (i) the exploitation of child labour; or
  - (ii) the use of forced labour; or
  - (iii) violations of human rights; or
  - (iv) involved in breaches of the international conventions listed in paragraph 1.1.1 of these Redland Dealing Principles; or
  - (v) breach of any environmental laws, which, in Redland's reasonable opinion, is materially adverse to the reputation of Redland;
- (b) which Redland, acting reasonably, notifies to the Contractor in writing that it considers might bring Redland into disrepute or would be inconsistent with the values and principles of any member of Redland; and
- (c) whose association with Redland may, in the reasonable opinion of Redland, in any way, depreciate, tarnish, jeopardise or otherwise prejudice the goodwill and reputation associated with Redland or otherwise adversely affect the reputation and image of Redland or bring them into disrepute or disregard anywhere in the world.

### Ethical Dealing Principles

1.1 Without prejudice to any of the other terms of these Conditions, it is a fundamental term of any contract or relationship between the Principal and the Contractor that the Contractor at all times complies with the Redland Dealing Principles (which, by entering into such contract or relationship, the Contractor undertakes to do) as set out below:

1.1.1 the supply of all Goods or Services to Redland has been and will be undertaken in compliance with the following international conventions to the extent that they apply in Australia:

- (a) Forced labour (C29) <http://www.unhcr.org/refworld/docid/3ddb621f2a.html>;
- (b) Freedom of Association and Protection of the Right to Organise (C87)
- (c) Right to Organise and Collective Bargaining (C98);
- (d) Equal Remuneration (C100);
- (e) Abolition of Forced Labour (C105);

- (f) Discrimination (Employment and Occupation) (C111);
- (g) Minimum Age (C138);
- (h) Worst Forms of Child Labour (C182),
- (i) the European Convention on Human Rights (CETS 005) (this can be viewed at <http://conventions.coe.int/Treaty/en/Treaties/Word/005.doc>); and
- (j) the European Money Laundering Convention (this can be viewed at <http://conventions.coe.int/Treaty/EN/Treaties/Word/198.doc>);
- (k) the *Local Government Act 2009* (Qld); and
- (l) the *Modern Slavery Act 2018* (Cth).

1.1.2 None of the Contractor, its agents, sub-contractors, connected or associated persons or any person with whom the Contractor contracts in connection with the supply of such Goods and Services is an Inappropriate Person.

1.2 The Contractor will take such steps as are necessary to ascertain that third parties involved in the supply of such Goods or Services comply with Redland's Dealing Principles and shall forthwith notify Redland in writing in the event that it becomes aware that this is not the case.

1.3. The Contractor represents that neither it nor its agents, sub-contractors, connected or associated persons or any person with whom the Contractor contracts in connection with the supply of any Goods and Services is and is not involved in, will not become involved in and will ensure that each of its staff, agents, sub-contractors, consultants, connected or associated persons will not engage in or in any way support or facilitate any act, omission or other behaviour which could be considered to constitute bribery or other criminal offence under the Australian Criminal Code or any other legislation in any jurisdiction relating to bribery, corruption or fraud. In the event that there is any reasonable risk that this representation has, is or may become untrue at any time the Contractor will promptly notify Redland thereof and take such steps as Redland may reasonably require in order to rectify or deal with the situation.

## **Executed as an Agreement**

**These Purchase Order Terms & Conditions For the Supply of Goods and Services apply to all contracting activity with Council, unless expressly or by implication replaced by other more specific Contract Terms and Conditions. By providing your supplier details and accepting a Purchase Order with Council you agree to be bound by these Terms and Conditions as a binding lawful contract. If you wish to discuss or clarify any of these Terms and Conditions please contact Council's Procurement and Contract team on 3829 8999.**