

## **Standard Terms and Conditions forming part of Councils Official Order**

### **1 Contract**

This Contract records the binding agreement between the parties relating to the provision of the Goods / Services on the terms and conditions stated in this Contract. The Seller agrees to transact with Council in a manner consistent with good governance practices. The Seller will observe and comply with the Code of Conduct and Statement of Business Ethics adopted by Council current at the date of this Contract.

### **2 Price**

- (a) Council agrees to pay the Price to the Seller no later than 30 days after receipt of a tax invoice.
- (b) Unless otherwise agreed in writing between the parties, the Seller must not give Council a tax invoice until the Council has acknowledged receipt of the Goods / Services.
- (c) All tax invoices must refer to Councils official order number.

### **3 Delivery**

The Seller must provide the Goods / Services at the time and at the location required by Council. If the Goods are not delivered or the Services are not supplied by the time stipulated on the Purchase Order, the Council may, without prejudice to any other rights and remedies, rescind the Purchase Order, unless the delay is caused by factors outside the reasonable control of the Seller, as determined by the Council. Council must acknowledge receipt of the Goods if they have been provided and considered to be satisfactory. Council must issue an official order prior to delivery of goods or services. The Seller must advise Council of any price variations in writing within 48 hours of receipt of the Purchase Order otherwise the price will be deemed as correct as stated on Purchase Order.

### **4 Passing of Ownership**

Ownership of the Goods/Services passes to the Council on delivery of the Goods to the nominated address or upon payment of the Price by Council, whichever is earlier.

### **5 Warranties**

- (a) The Seller represents and warrants to the Council that:
  - (i) the Goods / Services correspond to the description in the Contract and conform to all specifications, drawings, samples and descriptions provided by the Council to the Seller;
  - (ii) the Goods / Services are fit for the purpose for which they are intended;
  - (iii) the Goods / Services are of the quality specified (or, if no quality is specified, the best merchantable quality);
  - (iv) the Goods / Services are free of any lien or encumbrance;
  - (v) the Council is entitled to the benefit of any manufacturers warranties in respect of the Goods / Services; and
  - (vi) the Goods / Services comply with all laws and requirements relevant to the provision of the Goods / Services.
- (b) All representations and warranties implied by law relating to the Goods / Services or their provision form part of the Contract and are not excluded, restricted or modified by the application to the Contract of any provision of the Trade Practices Act 1974 (Cwlth) or State Fair Trading Acts or their equivalents.

### **6 Defects**

- (a) The Seller represents and warrants that the Goods / Services are free of any omissions or defects or other failures (*Defects*) howsoever arising which renders them unsuitable for Council's requirements and occur at any time from the date on which the Council acknowledges receipt of the Goods / Services until the date being 12 months after that date.
- (b) The Seller must do any one or more of the following if required by Council because there are any Defects in the Goods / Services:
  - (i) refund the Price if Council returns the Goods / Services to the Seller;
  - (ii) repair, modify or replace (at the Seller's cost) any of the Goods / Services that have Defects; and
  - (iii) reimburse Council (on demand) for all costs and expenses incurred by the Council as a result of the Defect.

### **7 Indemnity and Insurance**

- (a) The Seller shall indemnify Council against claims in respect of personal injury or loss of, or damage to, any other property arising out of or as a consequence of the carrying out of the works, but the indemnity shall be reduced proportionally to the extent the act or omission of Council may have contributed to the injury, death, loss or damage.
- (b) The Seller must (at its cost) establish and maintain a public and products liability insurance policy for an amount of not less than \$20 million for any one occurrence in respect of the Goods / Services from the date of this Contract until Council has made full payment of the Goods / Services.

(c) All insurance policies established under this clause 7 must be on terms Council considers satisfactory. The Seller must give Council evidence that the insurance policies required under this clause have been established no later than 7 days after receiving a request from Council to provide such evidence.

### **8 Work Health Safety**

The seller shall undertake the work in accordance with the requirements of the Work Health Safety Act 2011 and in the same way is responsible for the activities of all subcontractors and suppliers.

### **9 Termination**

- (a) Council may terminate the Contract by written notice to the Seller:
  - (i) if the Seller breaches a term of the Contract and fails to remedy the breach within 14 days of the receipt by it of a notice from Council specifying the breach and requiring the Seller to remedy it;
  - (ii) if Council is of the reasonable opinion that the Seller is unable or unwilling to comply with its obligations under the Contract; or
  - (iii) if the Seller becomes bankrupt or makes an assignment of his estate for the benefit of his creditors or makes a composition or other arrangement with his creditors or if, being a company, the Seller goes into liquidation whether voluntary or compulsory (except for the purposes of reconstruction) or has a receiver appointed over all or any of its assets or if any person or corporation goes into possession of or appoints an agent over all of any of the assets of the Seller.
- (b) Termination of the Contract pursuant to this clause shall be without prejudice to the rights of either party accruing before termination. Notwithstanding subclause 9(a), Council may terminate the Contract immediately by written notice if there is a finding of serious wrongdoing or other misconduct against the Contractor or its employees (including employees of third parties engaged by the Contractor) under the PID Act.
- (c) The Seller will be liable to Council for any loss whether direct, consequential, economic or otherwise suffered by Council and arising out of or in connection with such termination or prior breach.
- (d) Council will not be liable to the Seller for any loss, whether direct, indirect, consequential, economic or otherwise, suffered by the Seller and arising out of or in connection with termination of the Contract.

### **10 No Assignment or Sub-Contracting**

The Seller must not assign, sub-licence or sub-contract the provision of the Goods (wholly or partly) without the Council's prior written consent and if consent is provided, the Seller must ensure that the terms and obligations contained in s. 82(2) of the PID Act (including without limitation those contained in this Contract) are contained in the contracts between the Seller and the relevant third party.

### **11 Sub-contractor Payments**

It is the Contractors Responsibility to ensure that all subcontractors and their employees are paid at or above the applicable award rates for their position, including but not limited to all allowances available under the award.

### **12 PID Act**

Section 82 of the PID Act applies to the extent that the Seller is engaged to provide services on behalf of Council (which includes without limitation the exercising of functions under s. 81(3) of the PID Act), and ought to be read together with the 'key terms' contained in s. 20 of the PID Act. The Seller acknowledges that it has been made aware of its entitlements, obligations and the requirements under s. 82 of the PID Act (and the subsections of the PID Act contained therein together with s. 20 of the PID Act). The Seller has also reviewed and familiarised itself with the Council's public interest disclosure policy on the Council's website.

### **Definitions**

In this Contract:

*Contract* means this document comprising the details appearing on the front page of order and the terms included with the order.

*Council* means Hornsby Shire Council ABN 20 706 996 972 and includes its servants and agents.

*Goods / Services* means all goods, services, products or materials described in the details appearing on the front page of the order.

*PID Act* means the Public Interest Disclosure Act 2022 (NSW) as amended from time to time.

*Price* means the amount stated in the details appearing on the front page of the order inclusive of GST, cost of delivery and any other on costs.

*Seller* means the legal entity described in the details appearing on the front page of the order and includes its servants and agents.